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The Solicitors' Journal

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Current Topics.

The New Judge.

FOLLOWING UPON the resolutions of both Houses of Parliament last week, representing that the state of business in the King's Bench Division required that an additional judge was necessary, comes the announcement that Mr. DU PARCQ, K.C., has been appointed. As usual, when a vacancy occurs on the Bench, the quidnuncs were busy in nominating this and that King's Counsel for the vacant post, but in all the lists of probable appointees the name of Mr. DU PARCQ had a place. This was natural in view of the golden opinions he won, both from the Government and from the public, by his masterly report, recently published, on the Dartmoor prison outbreak, a report marked by a clear perception of the realities of the situation, and further remarkable for the extraordinary promptitude with which it was issued. To his new duties Mr. DU PARCQ brings many qualifications, academic, forensic and judicial. At Oxford, where he had a very distinguished career, he was, as his colleague, Mr. Justice MACNAGHTEN, was at Cambridge, President of the Union; at the Bar, to which he was called in 1906, becoming a King's Counsel in 1926, he had a large and varied practice; while as Recorder successively of Portsmouth and Bristol, and as Commissioner of Assize, he gained judicial experience which has proved an excellent apprenticeship to the duties he will now be called upon to discharge. To these qualifications for judicial success have to be added a pleasing manner, in which courtesy holds a large place. Thus equipped, Mr. DU PARCQ will, we feel assured, make a valuable addition to the judicial strength of the King's Bench Division.

The Scottish Jury in Criminal Cases.

IN A variety of ways the jury empanelled to try a criminal case in Scotland differs from that which is put in the box in an English trial. First of all, the number is different, being fifteen instead of twelve as the jury is in England; secondly, the Scottish jury is composed of special and common jurors, five of the former and ten of the latter being ballotted; thirdly, if the accused person is what is called a "landed man," that is, a landed proprietor, he is entitled to have a majority of landed men on the jury. In the case of *Kennedy* (1838), 2 Swinton 213, the accused being a landed man, the jury consisted of eight landed men and seven common jurors. This provision in favour of landed men comes down from early times and is a curious illustration of the right of a man to be tried by his peers. In the actual procedure followed in a criminal trial in Scotland, various changes have been made in more recent times in consonance with more enlightened views on such matters. Thus, at one time the jury was given a copy of the indictment on which appeared, it may be, a list of previous convictions. That objectionable practice has been abolished, and now when a copy of the indictment is placed in the hands of the jury, any reference to previous convictions is carefully omitted. Another marked difference between the Scottish and the English systems in criminal trials is that in Scotland the jury may return a majority verdict. Again, the jury may return what Sir WALTER SCOTT called "that bastard verdict, not proven." Finally, in the matter of nomenclature, it is interesting to know that what we call the foreman of the jury our Scottish *confrères* designate by the much more grandiose title of chancellor.

Comment *Pendente Lite* in a Consistory Court.

IN *R.* v. *The Daily Herald, etc., ex parte The Bishop of Norwich, The Times*, 23rd February, a Divisional Court of the King's Bench Division consisting of HEWART, L.C.J., and MACKINNON and HAWKE, JJ., fined two newspaper companies £100 and £50 respectively for contempt of the Consistory Court of the Bishop of Norwich. The Bishop had initiated a prosecution against a beneficed clergyman in his diocese under s. 2 of the Clergy Discipline Act, 1892, one count being in respect of acts of immorality with a named young woman. One of the papers published certain interviews with this young woman, from which it appeared, according to her account, that the charges in respect of the offences committed with her were false. Further, that she had been bribed by a man and woman to make these false charges, when she was under the influence of drink, and had since retracted them in an affidavit. The other newspaper published an article by the clergyman, naturally in his own favour. In thus prejudicing the Bishop's case before trial, there could be no question as to the contempt of the Consistory Court in either case, and counsel for all the defendants offered unqualified apologies to the court on behalf of their clients. An issue as to the jurisdiction, however, was raised. The appropriate punishment of an Ecclesiastical Court for contempt of its decree used to be excommunication until that contempt was purged. Excommunication having long since lost its terrors, a stronger deterrent was needed, and the machinery of the "significavit" was devised as discussed in our note (73 SOL. J. 456). The issue was whether the two statutes of 1813 and 1832, creating that machinery, made it an exclusive remedy for such contempt, or whether relief by application to the King's Bench was a concurrent one. It

will be remembered that the remedy of "significavit" was used a few years ago against a Cambridgeshire farmer who, as lay rector, disregarded an order of the Consistory Court to put his chancel in repair, see "The Church's Power to Punish" (73 Sol. J. 722), and a similar case, *Morley* v. *Leacroft* [1896] P. 92. These were cases of contempt of an order of the court, for which the court itself needed to invoke assistance. The present case, however, was an application for relief, not by the court, but by a litigant, to prevent his case before it being prejudiced. On this distinction the court held unanimously that the King's Bench Division had concurrent jurisdiction to protect the inferior court, on similar reasoning to that in *R.* v. *Daily Mail, ex parte Farnworth* [1921] 2 K.B. 732. In the latter case the King's Bench judges fined the editor of the *Daily Mail* £200 with costs for improper comment on a court martial, not before hearing, but before sentence promulgated. This was done although a different procedure was possible under the Army Act. Proceedings before the King's Bench Division, which can punish either by fine or imprisonment, are no doubt more convenient than the "significavit" procedure, which is for attachment only.

Next Year's Income Tax.

Those taxpayers who are anticipating a reduction in the rate of income tax next year are likely to receive a bitter disappointment when Mr. Chamberlain opens his Budget in April. Some of the lay newspapers have predicted a decrease of "sixpence or even a shilling" in the rate of tax, but a little reflection will show that such a thing, welcome though it would be in all walks of life, is an impossibility if the Chancellor of the Exchequer is to hold fast to sound finance. It seems to have been overlooked generally that in the current year the Revenue has had the benefit of five-quarters of one year's income tax in the year and that next year only four-quarters can come in. Again, when he introduced his second Budget, in 1931, Lord Snowden pointed out that, in regard to next year, he was faced with a deficit of £171,000,000, and, taking the new taxation and economies into account, the surplus would not exceed £1,500,000. Up to the present this year the death duties are down by over £13,000,000, and the stamp duties have shown a disappointing yield. It would cost the Exchequer £30,000,000 to reduce the rate of income tax even by sixpence in the pound, and it is impossible to see where such an amount could be gathered from other sources. The Budget must be balanced on a cash basis, so that the Chancellor is unable to bank on what may be the yield from tariffs. Only last week the Financial Secretary to the Treasury said it was not possible at the present stage to give any estimate of the possible yield of these duties, and the Chancellor could not run the risk of having a second Budget again this year.

Rewards to Tax Informers.

The recent case of *Riach* has again drawn attention to the power of the Revenue authorities under s. 32 of the Inland Revenue Regulation Act, 1890, to grant rewards to informers who bring to light offences under the Income Tax Acts. Speaking at a meeting in Leeds last week, Mr. Ronald Staples described the practice as un-British and referred to cases where discharged employees had approached the Revenue authorities with some vague suspicions that their employers had avoided their income tax liabilities. These suspicions often proved to be unfounded, yet the taxpayer was put to the anxiety and expense of a prolonged investigation. The speaker made the suggestion that it would be a fitting gesture, in acknowledgment of the taxpayers' loyal effort in January, if the Chancellor of the Exchequer were to repeal the authorising section in the next Finance Act.

Non-criminal Courts for Motoring Offences.

Mr. Jack Hayes, in a recent number of the *Police Review*, suggested that special courts should be created for the trial of those accused of motoring offences, so that some differentiation should be made between their cases and those of people accused of more serious offences. He also believes that "the resentment of the offender would not be so real or permanent against the police, and public safety would not be imperilled." The suggestion is, of course, so far from being a new one that "Speed Courts" are established in various parts of America, and, no doubt, deal with minor motoring offences other than undue speeding, such as parking in forbidden places, absence or deficiency of lights, etc. In some places, indeed, as in Germany, a police official can, usually with the assent of the motorist, constitute himself an *ad hoc* tribunal on the spot, and fine the offender, exacting and giving receipt for the fine. The dangers of the last procedure, even if an official book of receipts with counterfoils is used, are so manifest that, although the counter-advantages of quick and inexpensive justice are obvious, there is little likelihood of its adoption here. There are no doubt certain arguments for "Speed Courts," but we obviously cannot in present circumstances afford to pay for a fresh set of judges for the purpose. The motorist who has parked his car in the wrong place may feel some grievance if his case is sandwiched between those of a thief and a wife-beater, but, equally, so might the worthy citizen whose cook had allowed his kitchen chimney to catch fire, or any other minor offender. It is stated that Mr. Claud Mullins, at North London Police Court, has set apart a special afternoon for husband and wife cases, and it might be possible to do the same for those of motorists, though the more serious charges, such as for reckless driving, driving when drunk, etc., show, when proved, a disregard for public safety that is certainly a moral offence. Indeed, discrimination between moral and merely technical offence is not so easy as it looks, for, apart from a small minority of cases where the law may be deemed unnecessary, or fussy, nearly every charge involves, at the least, want of consideration for the public or private rights of others. In a country where the credit bookmaker and the totalisator are tolerated, perhaps the street bookmaker may claim to leave the court without a stain on his moral character, even if convicted and punished, and the ethical offence of the off-licence retailer who sells a half-bottle of whisky, setting aside the argument that he is forbidden by law to do so, would require some casuistry to establish.

Destructive Maliciousness.

The perpetration of certain types of comparatively petty, but none the less irritating, acts of malicious damage appears to recur almost periodically. An attack of window slashing breaks out, and expensive shop-front plate-glass windows in widely separated parts of London, and sometimes in the provinces, are viciously and maliciously scratched. Or, may be, schoolgirl after schoolgirl who is modern enough to have "plaits," is the victim of some rogue with a pair of scissors. In these cases, of course, as distinct from the window slasher, there may be some pecuniary profit in disposing of the shorn tresses to an unsuspecting or unscrupulous coiffeur. Even the clothes one wears are not safe! A recent correspondent in *The Times* (8th February) wrote to warn others of his unfortunate experience. After riding on the outside deck of two omnibuses he discovered that the heavy overcoat he was wearing had been "slashed in half-a-dozen places." There is something particularly "un-British" about this class of offence which not unnaturally makes the average man long to get his hands on the offender. Since, however, private physical vengeance is forbidden and the victim must look to the law for redress many must regret that the authorities' powers of flogging are so narrowly restricted. In a recent case in which a youth of eighteen was convicted at the Hampshire Assizes (17th February) of setting fire to ricks, Mr. Justice Rowlatt, in sending him to Borstal for three years, said that he regretted that he could not order a sound thrashing, and he added that he hoped that they would give him a fairly bad time at Borstal.

Criminal Law and Practice.

LARCENY BY BAILEES.

However "stale, flat and unprofitable" it may be, generally, to ponder over the reports of proceedings which have been heard and finally determined on points of law in our magisterial courts, a not uninteresting case received a judicial ruling at the Mansion House early in the month.

A, a general merchant, was charged with fraudulently converting to his own use and benefit a quantity of silk which had been entrusted to him by Messrs. B for the purposes of sale. A sold the silk, but, when asked for the proceeds, said, "I have been to the dogs and lost it there." Evidence to this effect was given by a director of Messrs. B, who himself had given A into custody. At the hearing a dispute arose between the solicitor appearing for the prosecutor (who asked for a remand) and the learned clerk to the court. The latter appears to have doubted whether A, being a bailee, could be charged with fraudulent conversion, and when the solicitor submitted that s. 20 (iv) (*b*) of the Larceny Act, 1916, appeared to him to cover all the ground, suggested that that section applied only to property received from a third person. In the end, the alderman said that he could see no criminal offence disclosed in the evidence before him, that the police had had no power to arrest A, and that the prosecutor had had no right to give A into custody. A was thereupon discharged.

At first sight the decision may appear startling. That, with apparent impunity, an individual may refrain from handing over the proceeds of a sale in such circumstances, and may expend them upon "the dogs" or in any other convenient method of dissipation, and that the owner of the goods so sold may find himself criticised for any steps he may have taken in a punitive direction, are propositions alike alarming to the commercial community and encouraging to those whose ideas of "*meum et tuum*" are, to say the least, incoherent and nebulous.

But the situation is not quite so Gilbertian as it may seem. The newspaper report of the case before us is short and perhaps inadequate for any discussion of the specific views said to have been put forward by the participants. Nevertheless the law is not really obscure.

In the first place, of course, bailment is the result of contract, and it is always necessary where a contract exists or has existed and is relevant, to ascertain the true terms in each particular case. The famous definition of "bailment" in *Coggs* v. *Bernard* (1702), 2 Sc.L.C. 191, makes it clear that the article bailed is to be returned either to the person who has delivered it to the bailee or to some other person appointed by him to receive it. Or, as Cockburn, C.J., said in *R.* v. *Hassall* (1861), L. & C. 93, "a bailee must return either the article bailed or something into which it has been converted in accordance with the terms of the bailment."

In our case, the silk was entrusted to A in order that he might sell it. He was not therefore expected to return the silk itself, but only the proceeds. Was he to hand over the actual moneys received, the very pounds, shillings and pence? We are not told, but presumably, in the ordinary course of business, Messrs. B would rarely contract with a general merchant to deliver to them the identical coins he received from his purchaser. If such be the case then A has not fraudulently converted the silk, for he has in fact done what he has agreed to do, namely, to sell it. If he be not bound to return to Messrs. B the actual cash received he cannot be charged with stealing such moneys. At the most he would be liable civilly to account to Messrs. B as their agent.

All depends on the circumstances. In *R.* v. *De Banks*, 12 Q.B.D. 29, F entrusted G with a mare for sale. F's wife saw G sell the animal, and she thereupon demanded from him the money which he had received from the purchaser. G refused to give it up, and absconded without paying, but was held guilty of larceny for, "being asked by the wife for the money, he became bailee of the money." Similarly, if one sends another to the bank to cash a cheque, and the other absconds with the proceeds, he is guilty of larceny as a bailee, being bound to return with the actual cash handed to him over the counter.

In all cases it will be perceived, therefore, it is necessary to examine every detail of the transaction, bearing in mind, of course, that a bailee can never be convicted unless he has had the intent to steal. Due consideration of all the circumstances may discover the existence of such intention and make applicable the words in the margin to s. 1 of the Larceny Act, 1916, ". . . a person may be guilty of stealing any . . . thing . . . if, being a bailee, . . . he fraudulently converts the same to his own use or the use of any person other than the owner." The offence itself is set out in s. 20 (iv) (*b*), ". . . (every person who) having . . . received any property for or on account of any other person, fraudulently converts to his own use or benefit . . . the property . . . or any proceeds thereof . . . shall be guilty of a misdemeanour . . . ." It is immaterial from whom the property was received: *R.* v. *Bottomley* (1922), 38 T.L.R. 805; or whether or not a contract existed between the owner and the defendant, e.g., of master and servant: *R.* v. *Messer* [1913] 2 K.B. 421, where a taxi-cab driver, who agreed to hand over 75 per cent. of his takings to the cab-owner, was convicted for not doing so.

A more exhaustive examination by the court in the case to which attention has been drawn might or might not therefore have unearthed circumstances pointing to a criminal intent in A. It is clear that all cases where bailment arises merit especial enquiry, for, where the fraudulent intention is proved, there is no possible doubt as to their being covered by the Larceny Act of 1916.

Rights of Way over Registered Land.

Ownership in common of rights of way and other easements furnishes an interesting example of the exceptions to the rule forbidding the holding of a legal interest in land in undivided shares. This exception is contained in s. 187 (2) of the Law of Property Act, 1925, and is confirmed in respect of registered land by s. 3 (xi) of the Land Registration Act, 1925. This preservation of ownership of easements in common is not of great practical value in respect of registered land, however, unless the grants and reservations of easements affecting such land are duly registered under the last-mentioned Act. Nevertheless such precaution is frequently neglected, with the result that very serious inconvenience and delay are frequently occasioned when either the dominant or servient tenement is subsequently dealt with. Various reasons are advanced for this omission, but the view entertained by many that if the land itself is registered easements may be left to take care of themselves must, I think, be largely responsible for such a lapse in registration routine.

The creation and acquisition of easements over registered land give rise to far greater complications than would be the case if the land were not so registered. I cannot, however, deal with the subject in a general sense, but must confine my remarks to that class of easements which fall within the purview of the Land Registration Act, 1925. Easements is, of course, a very comprehensive term, but it must be understood that my use of the expression is intended to be restricted to rights of way only.

Even from this limited standpoint the matter cannot be very clearly elucidated unless attention be called at the outset to two of the most prominent features which lie at the root of all registration and noting up of easements under the Act.

The first point to be noticed in this connexion is the distinction which exists between legal and equitable easements

respectively. Legal easements, that is, easements which are capable of subsisting or of being transferred or created at law for an estate equivalent to the fee simple absolute in possession or a term of years absolute, are the only kind of accessorial rights requiring registration under the Act. Purely equitable easements, that is, easements which confer no legal ownership other than that which may be acquired by prescription, cannot be registered, neither does it appear that any machinery is provided by the Act or the rules for their preservation. An easement in gross furnishes another example of the classes of interest which are forbidden registration under the Act.

My second point relates to the capability of an easement to enlarge the enjoyment of one tenement at the expense of another. This dual operation is emphasised by the fact that the majority of legal easements should in so far as they confer a benefit be entered up in the property register as part of the description of the dominant tenement and in so far as they impose an obligation they should be noted up in the charges register as a liability or overriding interest against the servient tenement if registered.

All adverse easements operating at law are overriding interests. The same rule applies to such equitable easements as are not required to be protected by notice on the register, but as neither the Act nor the rules would appear to require an equitable easement to be so protected it follows that such an easement must likewise be classified as an overriding interest, and as such would not be deemed an incumbrance affecting registered land. If this be so, it would appear that for the purpose of ascertaining a purchaser's liability concerning easements affecting registered land it would not be necessary to discriminate between the nature or quality of easements at all, but that he would take subject to all easements, be they legal or equitable. Search should therefore be made in the land charges register whenever registered land is dealt with, even though it be registered with absolute title.

These preliminary observations will doubtless be useful in distinguishing between the nature and operation of easements such as rights of way, yet the process by which alone the full benefit thereof may be secured on the register will require to be considered in somewhat greater detail. To do this the more convenient course will be to deal with the subject under separate headings.

1.—The Power to Create and Reserve Easements.

The registered proprietor may grant in fee simple in possession any easement, right or privilege in, over or derived from registered land, or any part thereof, in any form which sufficiently refers in the prescribed manner to the registered servient tenement and to the dominant tenement, whether being registered land or not (s. 18 (1) (*c*)). He may also transfer the fee simple in possession of registered land subject to the creation thereout by way of reservation in favour of any person, any easement, right or privilege in possession either in fee simple or for a term of years absolute (*ibid.* (1) (*d*)). Similar powers to grant and reserve easements, rights or privileges in respect of leasehold land to the extent of the registered estate are also vested in the registered proprietor by s. 21 (1) (*b*), (*c*) and (*d*). All interests so created or reserved must be completed by registration in the same manner and with the same effect as provided by the Act with respect to transfers of the registered estate, and notice thereof must be entered on the register (s. 22 (2)).

It should be observed, however, that nothing in the Act contained renders it necessary to register easements, except in so far as they may be appurtenant to registered land (s. 22 (2) (*c*)). It will therefore be seen that the powers of the registered proprietor referred to above are very far-reaching. It must be noted, however, that none of the dispositions made under the powers contained in the foregoing sections will take effect unless duly completed by the registration, as provided by the Act; but if completed in this way they will take effect as registered dispositions and vest the easements, when so completed, in the registered proprietor for the time being. Inasmuch, however, as the sections authorising the exercise of the above-mentioned powers are in their nature decretory rather than declaratory, a direct obligation would appear to be cast on the registrar to see that the necessary entries are made in the respective registers in order that valid effect may be given to easements required to be registered or noted up, as the case may be, when application is made to him for that purpose.

2.—Appurtenant Easements.

Easements which were appurtenant at the date of first registration and those subsequently acquired fall to be dealt with under this heading. These, like most other easements affecting registered land, must, as indicated above, be considered from a two-fold aspect. First, in so far as appurtenant easements existing at the date of first registration confer a benefit, s. 5 of the Act provides that the registration of a person as first proprietor of the land shall vest in him all rights, privileges and appurtenances belonging or appurtenant thereto. These will pass without special mention on the register. Registration may, however, be effected in certain events. Thus, if at the date of first registration or at any time subsequently the registered proprietor wishes to have a specific entry placed on the register of an appurtenant easement capable of subsisting as a legal estate, application must be made to the registrar in the prescribed form for that purpose. On being satisfied that the easement complies with these requirements, the registrar may enter it as a part of the description of the land in the property register of the dominant tenement. The effect of such an entry would be to confer the same absolute good leasehold or possessory title to the easement as the land to which the benefit accrues is itself registered. If, however, the registrar is not satisfied that the easement is appurtenant he may enter notice of the claim on the register. The entry will be made by reference to the instrument creating the right, or by setting out an extract therefrom. Subject to any express exception or reservation, the benefit of the entry will pass to the grantee as part of the registered estate on his becoming the registered proprietor (Rules 252-257). Secondly, the negative or restrictive operation of an easement which imposes an obligation on the servient tenement must now be considered. Section 70 (2) of the Act provides that where at the time of first registration any easement, right, privilege or benefit is created by an instrument and appearing on the title adversely affects the land, the registrar must enter a note thereof on the register. But easements operating in an adverse capacity which are not created by an instrument stand on a rather different footing. These are dealt with by s. 70 (3) of the Act, which provides that where the existence of an overriding interest is proved to the satisfaction of the registrar, or admitted, he may enter notice of the same, or of a claim thereto, on the register; but no claim to an easement not created by an instrument may be noted against the title to the servient land if the proprietor of such land shows sufficient cause to the contrary. There is here no restriction confining the operation of sub-s. (3) to dealings on first registration. Sub-section (3) would, therefore, appear to have a general operation so as to embrace all adverse easements, whether existing at the date of first registration or subsequent thereto. If it is desired to enter up a notice under this sub-section application should be made to the registrar in accordance with r. 197. All easements not being equitable easements require to be protected by notice on the register which, in their adverse capacity, are overriding interests. These may be protected by being entered up in the charges register of the servient tenement (r. 7).

The procedure and advantages with respect to appurtenant easements outlined above would appear to be applicable to all land, whether registered with absolute possessory or good leasehold title as well as to transfers of the registered estate

and charges thereon, so that on a disposition of the land or of a charge thereon the benefit of all appurtenant easements would pass to the transferee or chargee without special reference being made thereto. If they are not registered, however, an endeavour should be made to get them noted up where possible.

3.—Prescriptive Easements.

Easements affecting registered land may be acquired by prescription in the same manner and to the same extent as if the land were not registered. If such an easement has been acquired for the benefit of the registered land and is also capable of taking effect at law, application should be made to the registrar for the registration thereof as a part of the description of the registered land to which it is attached (r. 250). Provision is also made for noting it up as an overriding interest in cases where the servient tenement is also registered (r. 250).

It is considered, however, that the mere noting up of an easement as an overriding interest would operate by way of notice only, and that no warranty would be implied thereby. The title thereto, notwithstanding such noting up, might therefore require to be established apart altogether from registration (" Brickdale and Stewart Wallace," p. 258).

A person dealing with the servient tenement might, of course, receive notice of the easement by independent means, but if this were absent and the noting up had been omitted, he would take free therefrom unless it had been registered as a part of the description of the dominant tenement. The noting up of an easement as an overriding interest may, therefore, be of supreme importance in many cases.

4.—Discretion of Registrar as to Noting up of Easements.

Registration of a multiplicity of easements would, of course, greatly reduce simplification. The registrar is therefore, in certain cases, given a discretion by the Act and rules with regard to the registration and noting up of easements so as to prevent the register becoming unduly incumbered. How far he may be justified in exercising such discretion must, of course, depend upon the circumstances attending any particular transaction, but this is a subject which cannot be discussed here except to point out that entries of a trivial nature will not be entertained.

5.—Registration of Newly-acquired Easements.

Having dealt with the problems concerning the registration and noting of existing easements the methods to be employed in connexion with the entering up of newly-acquired rights must be considered. No forms are given in the rules for guidance in the preparation of grants of easements over registered land, but appropriate examples will be found in most of the precedent books where dealing with registration of title to land. Alternatively, suitable words may be added to the transfer, and this is the method usually adopted. It does not necessarily follow, however, that the easement will be noted up in the register merely because the transfer contains a specific grant thereof. To ensure that such an important requirement is not overlooked a written application signed by both the grantor and the grantee should be made for the purpose. This may also be embodied in the transfer. Unless registration of the easement is applied for in this way it may never be entered up in the property register at all, which has frequently happened with rather unfortunate results.

Consequently, if the easement is not completed by registration, a purchaser of the servient tenement would not be bound thereby, unless it had been noted up as an overriding interest against the servient tenement or notice had been received by him *aliundi*. If the matter is to be given effect to in this way, however, the grantor must be the owner not only of the dominant, but also of the servient, tenement. If the servient land is not registered the registrar will require evidence of the grantor's title thereto to be furnished to him. It is not absolutely necessary to register the easement as an appurtenance as well as to note it up also against the servient land as an adverse interest, but if it is registered in the property register as a part of the description of the dominant tenement this should be sufficient, though it is considered that if the easement is noted up as an adverse interest in the charges register of the servient land, this would likewise answer the purpose. The first method is, however, much more satisfactory and should be adopted where possible.

"Solicitor and Client" Costs.

[Contributed.]

There is still a certain amount of misapprehension in some quarters as to the exact effect of the term " solicitor and client " costs, and considerable caution should be exercised in its use, for more often than not the result is by no means so advantageous as at first appears.

The precise effect of the term turns on the provisions of Ord. 65, r. 27 (29) of the Supreme Court Rules. This sub-section provides that " on every taxation the taxing-master shall allow all such costs, charges, and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save against the party who incurred the same no costs shall be allowed which appear to the taxing-master to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel, or special charges or expenses to witnesses or other persons, or by any other unusual expenses."

The leading case on the subject is *Giles* v. *Randall* [1915] 1 K.B. 290. The facts, shortly, were that the plaintiff brought an action against the defendant for breach of promise, and on the eve of the trial a settlement was arranged on the basis that the defendant paid to the plaintiff the sum of £500, together with " costs as between solicitor and client to be taxed (if necessary)," and judgment was entered accordingly.

The taxing-master dealt very drastically with the plaintiff's bill of costs, and objections were lodged. The taxing-master, in his answer to these objections, contended that the latter part of r. 27 (29) applied to all bills of costs except those which were to be paid by the client himself. This contention was upheld by Mr. Justice Rowlatt, and subsequently by the Court of Appeal.

In effect, the taxing-master argued that the matter must be regarded from the point of view of the person paying the bill, and that where the bill is to be paid by any party other than the client, then the taxing-master had discretion to disallow such items as he considered to have been incurred through over-caution, negligence or mistake, or in respect of special fees to counsel, or expenses to witnesses or other persons, or in respect of other unusual expenses.

In short, it was held that the taxing-master was bound to determine, in the first place, from what source the costs were to be paid, and then only where they were to be paid by the client himself was he to disregard the latter part of the rule. In all other cases the latter part of the rule applied.

The result of this is that a practice has grown up of dividing " solicitor and client " bills roughly into three classes, namely, (*a*) costs as between solicitor and client to be taxed and paid by the client himself, commonly known as " solicitor and own client " bills ; (*b*) similar costs to be taxed and paid out of a fund common to the client and other interested parties ; and (*c*) similar costs to be taxed and paid by some party other than the client.

The costs falling into the first class are those which are dealt with most generously, for the provisions of the latter part of r. 27 (29) do not apply, and all that remains for the taxing-master to do is to see that the costs were reasonably incurred,

and that the sanction of the client had been obtained in respect of any unusual expenses: see *In re Storer* (1884), 26 Ch. D. 189.

The costs falling into the other classes are dealt with more strictly, those falling into the third class being taxed more or less on the same lines as "party and party" costs, except that somewhat more liberal allowances are obtained for such items as "instructions for brief," as well as an allowance for all necessary letters to and attendances on client. Any increase in the costs arising from the causes enumerated in the latter part of r. 27 (29) is invariably taxed-off.

It seems clear from this that it matters little by what term the costs are described, and that under any circumstances, where the costs are to be borne ultimately by a party other than the client, the taxation cannot be other than on a more or less generous "party and party" basis. The use of the term "solicitor and own client" costs will not help, for the costs are still to be paid by a party other than the client, and this is the guiding factor, from the taxing-master's point of view.

This practice has led to considerable disappointment at times, and in fact PICKFORD, L.J., in the case cited above, observed that there was little doubt but that the plaintiff had not obtained the result for which she had bargained.

It seems that where the client is desirous of settling an action on such terms as will include the whole of his liability to his solicitor, then the only safe course is to avoid any provision for taxation of costs at all, and to stipulate, as a term of the settlement, for the payment of such a sum as will fully cover the solicitor's costs against his client. This sum can then be embodied in the judgment or order, and the difficulties of a "solicitor and client" taxation will be avoided.

The Four Blood Groups in Evidence.

[CONTRIBUTED.]

AT a recent hearing before the Guildhall Police Court of a murder charge, Dr. E. ROCHE LYNCH, the Home Office pathologist, gave scientific evidence connecting the blood found on the victim's necklace with that found on a razor which had come into the possession of the police. He stated that both the specimens of blood belonged to the same "blood group," namely Group I.

The blood group test has not yet become familiar in the courts of this country, though it is better known on the Continent. The first case of any importance in which it was proffered was the unreported case of *Rex* v. *Blakeman*, tried before Mr. Justice ACTON at the Leeds Assizes a few years ago. In that case Dr. ROCHE LYNCH testified that the blood found on the clothing of the accused belonged to the same group as some stains discovered on the clothing of the infant with whose murder the prisoner was charged. On this and other evidence the prisoner was found guilty, but insane. The same expert witness gave similar evidence in the recent case of *Rex* v. *Kell*, tried at Winchester last November, in which the accused was acquitted of the murder of a young girl. He found that the blood of the girl belonged to the same group—Group II—as a bloodstain found on a handkerchief said to belong to the accused.

TRANSFUSION ACCIDENTS.

Human blood consists, roughly speaking, of two constituents: a thin colourless fluid called serum or plasma, and a large number of corpuscles or cells which are suspended in the fluid. The red corpuscles greatly outnumber the white, which, for the purposes of the blood group test, do not matter. During the war, as blood transfusion became more and more common, it was soon found that some patients, instead of benefiting by it, suddenly became much worse, and that some of them died. Examination showed that, for some reason, the incoming blood, instead of mingling with their own, had clumped or "agglutinated," thereby obstructing the circulation in the vessels in which it lay. The investigators then recalled some work which K. LANDSTEINER had published in 1901, and which had been overlooked. This work proved that the reason lay in a definite incompatibility between the two bloods. LANDSTEINER had found that human red cells might contain two substances known as "agglutinogens," to which he gave the provisional names of A and B. A given blood might contain neither of these substances, or either singly, or both; in other words, it fell into one of the four blood groups, O, A, B, or AB. Corresponding to these agglutinogens in the cells, he postulated two "agglutinins" A and B in the serum; when an agglutinogen is present the corresponding agglutinin is absent. He presumed that agglutination was caused by the action of an agglutinin upon the agglutinogen designated with the same letter. Therefore, when the blood of an A or an AB person is injected into the veins of a B or another AB person—i.e., a person whose serum contains the corresponding agglutinin—it clumps; similarly, the blood of an A or an AB patient will agglutinate blood taken from a B or an AB donor. Persons of Group O neither suffer accident nor cause it; they are the universal donors and universal recipients. This discovery enabled transfusion to be practised safely, provided that a simple test was carried out on the donor and the recipient.

THE GROUP TEST.

A microscope slide with two shallow depressions is taken; a small quantity of known A serum is placed in one depression and a small quantity of known B serum in the other, and a drop of the blood to be tested is introduced into each pool of serum. If the unknown blood is AB, its cells will agglutinate or clump together in both pools; if it is A it will agglutinate in the B pool but not in the A; if it is B it will agglutinate with the A serum and not with the B; if it is O it will agglutinate with neither serum. The groups are also known by the numbers 1, 2, 3 and 4, and the following table shows the correspondence between SNYDER's (the A, O and B classification) and MOSS's numerical classification, which is in commoner use and was employed by Dr. ROCHE LYNCH in his evidence. It also shows the relative frequency with which each group is found in the English race.

Moss's Classification.	Snyder's Classification.	Percentage of persons belonging to the group.
1	AB	3
2	A	43·4
3	B	7·2
4	O	46·4

It is, therefore, obvious that the test has a definite value as negative evidence. For instance, if two specimens of blood are suspected to come from the same victim but appear to belong to two different blood groups, the test is conclusive evidence that they come from different persons. If it is sought to connect O group stains on the clothing of a victim with a suspected person whose blood group on test proves to be B, the evidence clears him as far as those stains are concerned. In a positive sense, the test only shows possibilities, which are narrower the rarer the group is in the community. According to the figures of Hirszfeld & Hirszfeld,* Group I, the rarest, only occurs in 3 per cent. of English people, and the work of other investigators shows that this figure does not differ much in other races. If, therefore, the bloodstain on the clothing of a suspect and the blood of a dead person are both of Group I, the probability of their being connected is 33 to 1. A good defence would, of course, be for the suspect to show that his own blood belonged to Group I, in which case, if the suspect stated that the stain on his clothing came from a cut or from nose-bleeding, the blood group evidence on both sides would cancel out.

Another forensic use to which the blood group test can be applied is in the determination of disputed paternity. The characteristics which differentiate blood into groups are inherited as dominant factors according to MENDEL's law,

* "The Lancet," 1919, ii. 675.

and the possibilities have been calculated and proved by the observations of many workers. Here again the value of the test is negative; while it is possible to say with certainty that the defendant cannot possibly be the father of a given child, it is never possible to say that he must be its father. Some Continental courts now have the power to order a test to be performed on the defendant in a paternity case, but not on the accused in a criminal trial.

Company Law and Practice.

CXVIII.

ACCOUNTS—II.

LAST week, when dealing with the accounts of companies in a somewhat general way, I had occasion to make some remarks indicating that there is certainly a good deal of solid argument to be advanced in favour of the view that if the accounts of a company are presented in an unsatisfactory state, it is the fault of the members of that company, and that there is no reason why the Legislature should interfere to protect such of the community as are fools from the consequences of their folly. However, this week I will abandon the position of defender of lost causes, and devote some space to an examination of the requirements of the Act as to accounts.

It is only a recent innovation which imposes upon a company the liability to keep proper accounts. The Greene Committee reported as follows in 1926: "Under the present law there is no direct statutory obligation on a company to keep proper accounts." It is perhaps necessary to add that this phrase refers to companies incorporated under the various Companies Acts; certain forms of statutory company have not, for many years, been free to present their accounts entirely in their own way. There are two headings under which this question of accounts conveniently falls: The books to be kept by the company, and the periodical accounts to be prepared by it. Under the first heading, s. 122 of the Companies Act, 1929, provides that every company must keep proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company; and

(*c*) the assets and liabilities of the company.

The section continues by providing for the location of these books, and imposes penalties for default in having them kept; but we have to go to another, and totally distinct, section in order to get some amplification of these requirements. This is s. 274, which creates an indictable offence: If, in a winding up, it is shown that proper books of account have not been kept by the company during the two years immediately preceding the commencement of the winding up, certain persons may thereupon be indicted; sub-s. (2) of this section, which is the one which is material for our present purpose, defines the conditions under which it is to be held that proper books of account have not been kept under the section. Somewhat curiously, it makes no reference to s. 122, but says that proper books of account are to be deemed not to have been kept "if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified."

Reading through this latter section, one is at once struck by the difficulty of the task which there confronted the draftsman; and then one begins to wonder if it really adds anything to s. 122. Whether it does or not depends on what meaning is put on the word "proper" in s. 122; and what that meaning is to be must vary according to the trade in which the company engages. No doubt if evidence were to be called on the point there would be much divergence of opinion; but, whether the two sections cover the same ground or not is immaterial in the sense that every wise man will endeavour, if and so far as he may at some time or another become liable under s. 274, to see that his company complies with the provisions of s. 274. If this is done, compliance with s. 122, so far at any rate as (*a*) and (*b*) are concerned, must follow, in the absence of rather special circumstances. These provisions have doubtless found their way into the statute book, not only by reason of the not inconsiderable number of definitely fraudulent companies (mostly of the one man type), but also as a stimulus to those private companies whose affairs are conducted in the almost unbelievably haphazard way which is familiar to every practitioner in company law. These sections do not appear to have attracted a tremendous amount of attention, and the criticisms directed against the present law relating to accounts do not, so far as I have been able to discover, extend to these two sections, or the matters there dealt with; they are directed solely against the requirements with regard to the periodical accounts of companies The difficulties which arise owing to the apparent lack of connexion between s. 122 and s. 274 are easily explained, when one realises that s. 274 (2) is similar in its terms to s. 7 (*b*) of the Bankruptcy (Amendment) Act, 1926. This is not the first time in these columns that I have drawn attention to the dangers run by the draftsmen of the Companies Act by lifting sections bodily out of the bankruptcy statutes and planting them down in substantially the same form in the Companies Act. In this case there is no real inconsistency between the sections, but there is, shall we say, a lack of cohesion which does not assist one in attempting to arrive at the true construction to be put upon them.

Let us therefore see what is required with regard to these periodical accounts. In the first place we can draw a distinction by dividing these periodical accounts into two: the profit and loss account, and the balance sheet.

Both profit and loss account and balance sheet have to be submitted to the company in general meeting from time to time; a profit and loss account must be laid before the company in general meeting once in every calendar year, and it must be made up from the date of the preceding account to a date not more than nine months before the date of the meeting (except in the case of a company carrying on business or having interests abroad, when the period is twelve months). In the case of new companies, the first account must be made up from the incorporation of the company, and the directors are given eighteen months from the incorporation in which to lay it before the company. The Board of Trade may extend these periods in the case of any particular company: s. 123 (1). A balance sheet as at the date of the profit and loss account must also be made up and submitted to the company in general meeting; it must be made up in every calendar year, and presumably one must be submitted every calendar year along with the appropriate profit and loss account, though the section does not expressly say so: s. 123 (2). Every balance sheet must have a directors' report attached to it, which must be a report with respect to the state of the company's affairs and must contain the directors' dividend recommendation and a statement of the amount which they propose to carry to reserve.

(*To be continued.*)

A Conveyancer's Diary.

A Point on Puisne Mortgages and their Priorities.

Here is another question arising in actual practice which must, I think, be of interest to all conveyancers, and I should like to know what my readers think about it. For my part, I have found it a problem which is somewhat of a puzzle in itself, and also, in what I may call its ramifications, raises points which are worth consideration.

The facts, as put to me, are, so far as material for my present purpose, as follows :—

An estate owner mortgages his land to a first mortgagee, who holds the title deeds and subsequently creates second, third and fourth mortgages, none of which are protected by a deposit of documents and are therefore puisne mortgages. The puisne mortgages are all registered, in due order of date, under the Land Charges Act, 1925.

The mortgagor wishes to raise further money, and not being able to do so by means of a still further puisne mortgage, arranges with the first mortgagee and with each of the puisne mortgagees that they shall postpone their securities to a new mortgagee, who is to become a first mortgagee and to receive the title deeds.

The question is : how is that to be done so that the original first mortgagee shall retain his priority over the original, second and subsequent mortgagees.

At first sight it might be said that it is easy enough. All you have to do is to get the original first and subsequent (puisne) mortgagees to join in a deed postponing their mortgages to that of the new first mortgagee, but retaining their priorities as between themselves.

Before 1926 that could no doubt have been done to the perfect satisfaction of all parties.

But can it be done, in that way, now ?

I think that the first point (and perhaps the most difficult one) to be decided is, what would be the position of the original first mortgagee, assuming such a deed to have been executed by all parties and the title deeds handed over to the new first mortgagee ?

In the first place, it would appear that having parted with the title deeds the original first mortgagee becomes *ipso facto* a puisne mortgagee, although he was not so when he advanced his money.

The Land Charges Act, 1925, s. 10 (1), Class C (1), defines a puisne mortgage as—

> " Any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected . . . "

Now, if the sub-clause had read " not being a mortgage *for the time being* protected by a deposit of documents " there could have been no doubt about it. The original first mortgagee would have become a puisne mortgagee immediately upon parting with the deeds. But that is not what the sub-clause in fact enacts. The point is, of course, of the utmost importance, because if the original first mortgagee, by parting with the title deeds, becomes a puisne mortgagee, he must register his mortgage as a land charge Class C with the result that he will be postponed to the second and other previously registered mortgagees by virtue of the provisions of s. 97 of the L.P.A., 1925, which reads :—

> " Every mortgage affecting a legal estate in land made after the commencement of this Act, whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected) shall rank according to its date of registration as a land charge pursuant to the Land Charges Act, 1925."

That is a hard saying so far as concerns our original first mortgagee, who may have been led into executing such a deed as that which I have suggested would have sufficed to retain priority for him before 1926.

I must say that, on the best consideration that I can give to it, I have come to the conclusion that in such circumstances the original first mortgagee does become a puisne mortgagee when he parts with the documents of title, and I do not see how he can preserve his priority even between himself and the other puisne mortgagees.

It might be contended that the subsequent puisne mortgagees are estopped by their deed from denying the priority of the original first mortgagee and no doubt they would have been before 1926, but s. 97 is quite definite regarding priorities, and does not (as it might have done) enact that its provisions shall take effect subject to any agreement between the parties concerned. The section appears to be purposely framed so as to override any such agreement and to settle the order of priority in accordance with the date of registration, notwithstanding any agreement varying that order.

I may say, in passing, that it might be suggested that, if I am right, a first mortgagee having the deeds who creates a sub-mortgage and parts with the deeds to the sub-mortgagee, becomes at once a puisne mortgagee. I think, however, that in that case the sub-mortgagee holds the deeds on behalf of the first mortgagee (subject, of course, to his charge), and so it cannot be said that the first mortgagee is not " protected by the deposit of documents relating to the legal estate affected."

It seems from what I have said (and assuming it to be right) that no deed, although executed by all the mortgagees, can be effective to preserve the priority of the first mortgagee in such a case.

It is unfortunate that the L.C.A., 1925, does not make any provision for allowing a puisne mortgage to be registered in priority to other registered mortgages by consent of the latter. There is, in fact, no such provision, and I do not know that even an order of court could be obtained to that effect.

The question, then, is what is to be done ? I can see nothing for it except to obtain a discharge of all the mortgages and cancellation of the registration of all of them, and to start *de novo* by creating a new series of mortgages and registering such of them as are puisne mortgages (which really means in practice all but the first mortgage) in the order in which they are intended to take effect.

That appears to be a somewhat cumbersome procedure, but I do not see how the transaction is otherwise to be carried out.

I think that it will be seen that this view of the matter is right when it is remembered that each of the mortgagees has, as a general rule, a legal term of years vested in him, which cannot be got rid of except by surrender. Of course this does not apply to charges by deed expressed to be by way of legal mortgage created under s. 87 of the L.P.A., 1925.

Whilst on the subject of puisne mortgages, I may again call attention to the apparent clashing of the provisions of s. 97 of the L.P.A. and those of s. 13 (2) of the L.C.A. The former makes priorities depend upon the order of registration, but the latter enacts that " A land charge of Class B, Class C or Class D created or arising after the commencement of this Act shall be void as against a purchaser of the land charged therewith or of any interest in such land unless the land charge is registered in the appropriate register before the completion of the purchase."

" Purchaser," of course, includes a mortgagee. So, if a puisne mortgage is created in favour of A at 4 o'clock to-day and another in favour of B at 9 o'clock to-morrow morning, and A registers before B, then under s. 97 of the L.P.A. the priorities are determined by the order of registration so that A comes first, whilst under s. 13 (2) of the L.C.A. the mortgage to A is void as against B whether the latter registers or not. That riddle remains unread.

Mr. Ernest James Wilde, solicitor, of Winchester, who died on 16th November, aged eighty-two, left property of the value of £44,687, with net personalty £30,809.

Landlord and Tenant Notebook.

Varying the Rent.

An unreported case, *Parker* v. *Briggs*, discussed in THE SOLICITORS' JOURNAL for 6th May, 1893 (Vol. 37, p. 452), shows how a bargain by which parties to a lease have agreed to a modification of the rent may be enforceable. The legal obstacles in the way of the party relying on such an agreement are usually the absence of consideration and the absence of a deed. What one might call the recognised answer to such arguments is the contention that the negotiations and subsequent conduct of the parties resulted in a surrender of the existing tenancy by operation of law plus the grant of a new tenancy. In *Parker* v. *Briggs*, it appeared that the defendant, a tenant holding under a lease determinable by six months' notice and containing a tenant's covenant to repair the fences, had given an invalid notice to quit, accompanied by an intimation that he would leave unless the rent were reduced. The landlord, the plaintiff in the action, wrote in reply that the rent would be reduced as from next May. The letter also said the tenant would be relieved of the obligation to repair. Conversations followed. When May came the defendant stayed on, and the plaintiff accepted rent at the reduced figure. He sued for the difference. The jury found that the old lease had been surrendered and a new parol tenancy granted, and the Court of Appeal refused to disturb the verdict. The *dictum* of Parke, B., in *Doe, d. : Murrell* v. *Millward* (1838), 3 M. & W. 328, at p. 332, to the effect that a surrender cannot be *in futuro*, was not followed. The *dictum* in question has sorely troubled many text-book writers, and the modern authorities certainly suggest that it can be disregarded. The true position seems to be that "surrender *in futuro*" is a contradiction in terms, while agreements to surrender have frequently been enforced.

In support of his contention that a new tenancy had been created in the above case, the defendant had, of course, to rely on the doctrine of part performance. The part performance consisted of occupation and payment and acceptance of rent; on proof of these, the tenant would be entitled to give evidence of any other terms (*Brough* v. *Nettleton* [1921] 2 Ch. 25), including the position as to repairs.

A case in which the landlord was able to rely on a surrender and a new grant in support of a claim for an increased rental was *Ex parte Vitale : re Young* (1882), 47 L.T. 480, which arose out of a distress levied against the receiver and manager of a bankrupt tenant. The original lease had been for five years at £12 10s. per month, but about a year after the grant the premises, a café, had been badly damaged by a fire, and the landlord had re-entered in order to rebuild. It was then agreed that improvements should be effected and the rent increased to £16 13s. 4d. per month. The lessor's solicitors wanted the lease endorsed accordingly, but the tenant said this was unnecessary and that he would pay the increased rent. The first payment he made on resuming occupation corresponded with the new rental; then, on his defaulting, the landlord distrained for two months' rent, namely, £33 6s. 8d.; the tenant's solicitor tendered £25; this was refused; the tenant's solicitor then paid the £33 6s. 8d. demanded, but "under protest." Soon afterwards, the tenant went bankrupt, a receiver and manager was appointed, and the lessor distrained for one month's rent, £16 13s. 4d., after being offered £12 10s. The matter then came before the Chief Judge in Bankruptcy. All the leading authorities on surrender in law and part performance were duly cited, but the court had no difficulty in finding that the old lease had been surrendered and that there was a good and complete bargain. The "protest" accompanying the earlier payment was ridiculed, the new grant then being complete.

The above can be contrasted with *Re Smith & Hartog : ex parte Official Receiver* v. *Leverson* (1895), 44 W.R. 79, which illustrates the ordinary case of a temporary remission. The lease was for twenty-one years at a progressive rent, that is, at £150 per year for the first two years, and £200 for the rest of the term. In the third year the term was assigned to tenants who, after negotiation, were to be allowed to pay £100 for the two following years, £250 for the next two years, and thereafter £200 per annum. Two gales of rent in accordance with this arrangement were paid; then, the tenants defaulting, distress was levied for £25 as one quarter's rent; but, when on the following quarter-day, a receiving order was made, the landlord distrained for £100, a half-year's rent. The official receiver sought to recover the excess; but Vaughan Williams, L.J., saw no evidence of a surrender and new lease, and was not sure that there was any consideration for the alleged agreement.

Indeed, if there be no surrender of the old lease, the question of consideration may be a delicate one. Two cases from Ireland, where rent has so often caused trouble, illustrate the the position. In *Fitzgerald* v. *Portarlington* (1835), 1 Jones 437, a lease for three lives had been granted in 1815, but in 1822 the then lessor had consented to abate the rent in consideration, as a document executed by her (but not under seal) said, of the improvements effected by the tenants and of the diminished value of land. The reduced rent was accepted for seven years before ejectment proceedings were taken on the tenant defaulting; the arrangement was then held to be a voluntary promise, unenforceable for want of consideration. This decision was not referred to in *Clarke* v. *Moore* (1844), 1 Jo. & Lat. 723, in which the tenant had occupied under what was construed as an agreement for a lease since 1814. In 1820 the landlord had voluntarily reduced the rent, but wanted the old figure inserted in the lease. He abandoned his contention before judgment, but Lord Chancellor Sugden, in dealing with costs, said that the 1820 agreement was not a new one, but an enforceable modification of the original, and that it would be inequitable to decree a lease at the old rental after the reduced figure had been accepted for so long.

As regards form, a concise but lucid statement of the rule by which a document under seal may be varied by parol is to be found in *Berry* v. *Berry* [1929] 2 K.B. 316.

Our County Court Letter.

THE REMUNERATION OF DENTISTS.

THE above subject has been considered in two recent cases. In *Birtwhistle* v. *Cattley*, in the Liverpool Court of Passage, the plaintiff claimed the return of £22, paid on account of artificial teeth which did not fit, and the defendant counter-claimed £9 10s., being the balance of the agreed price of the teeth. The defendant's case was that the dentures were good fits when supplied, but the upper set had warped (through being repeatedly soaked in hot water) and had been re-modelled. Judgment was reserved by the presiding judge (Sir W. F. K. Taylor, K.C.), who held that the plaintiff had not given the teeth a sufficiently patient trial, as the alleged defects were capable of adjustment. There was therefore no breach of contract by the defendant, who had exercised due care and skill, and was entitled to judgment on the claim and counter-claim, with costs.

In *Matthews* v. *Griffin*, at Stratford-on-Avon County Court, the claim was for £28 1s. 6d. for dental services rendered to the defendant's son, while an in-patient at Stratford Hospital, as the result of an accident. The plaintiff was honorary dental surgeon at the hospital, and made a preliminary examination of the patient's fractured jaw, for which no charge was made. Under the ordinary procedure, however, it transpired that the patient had a local dentist who could attend him, and the plaintiff therefore only continued his treatment after receiving telephone instructions from the defendant (the patient's

father) in which the patient's doctor concurred, after the situation had been explained to his usual dentist. The defendant denied the telephone conversation with the plaintiff, however, and contended that the hospital bill for £58 was not only for maintenance and treatment of an injured leg, but also included a charge for dental treatment. His Honour Judge Drucquer gave judgment for the amount claimed, with costs. Compare the notes on "Hospitals for Paying Patients," in the "County Court Letter," in our issue of the 17th October, 1931 (75 Sol. J. 695), and "The Remuneration of Doctors," in the "County Court Letter," in our issue of the 26th December, 1931 (75 Sol. J. 880).

LIABILITY FOR DAMAGE BY FOXHOUNDS.

The difficulty of accounting for a high percentage of abortions in the lambing season was recently illustrated at Alcester County Court in *Perks* v. *Webb and others*, in which the claim was for £77 2s. in respect of damage to fifteen ewes and thirty-seven lambs, which had died as the result of being alarmed by foxhounds, the property of the Worcestershire Hunt. The plaintiff's case was that (1) his in-lamb ewes had run away from the hounds, which had entered his field on the 2nd February, 1931, although no horsemen had done so; (2) the lambing season should have begun a week later, and he valued his losses at 70s. in respect of each ewe and lamb. The case for the defendants (sued for and on behalf of the committee) was that (*a*) no complaint was made until the 23rd February, and no opportunity for inspection of carcases had been given; (*b*) the field was boggy and water-logged and unsuitable for in-lamb ewes, which were also underfed; (*c*) the plaintiff worked as a mechanic in the day-time, and was unable to look after the sheep, and the abortions complained of were due to faulty attention. His Honour Judge Roope Reeve, K.C., was not satisfied as to the cause of death of the sheep, and judgment was therefore given for the defendants, with costs.

CHOICE OF DISTRICT FOR COUNTY COURT SUMMONSES.

In the recent case of *Douglas* v. *Burton*, at Shipston-on-Stour County Court, the claim was against the chairman of the Dogs' Home, Battersea, for the return of the plaintiffs' two dogs. The latter had been received into the home at Easter, 1930, on the plaintiff's undertaking to pay 7s. per dog per week, but (in consequence of the arrears of such payments) the animals were disposed of in September, 1930. A preliminary objection was taken that the action should be heard in London, and His Honour Judge Randolph, K.C., held that, as the cause of action had not arisen in the Shipston district, the action should be transferred to Wandsworth County Court. By consent the proceedings were amended by adding the secretary of the Dogs' Home as a defendant, he and the above chairman being sued in their representative capacities. For a prior reference under the above title, see the County Court Letter in our issue of the 10th October, 1931 (75 Sol. J. 670).

In Lighter Vein.

The Week's Anniversary.

Lord Hotham died on the 4th March, 1814, after thirty years' service as a judge of the Court of Exchequer, followed by nine years in retirement. His peerage, however, was the reward not of his judicial labours, but of the naval achievements of his brother William, whose title he inherited the year before his death. At the Bar he was so obscure that on his elevation to the Bench everyone asked, "Who is he? What's his name?" Still, his polished manners, his kindness and his excellent understanding made him a good judge despite a tendency to avoid the decision of difficult points of law. A contemporary, writing in 1790, notes that "the Humanity, the Solemnity and the impressive Pathos of his Address to Prisoners has melted the most obdurate to Contrition and Repentance." The same writer judged him to possess all the qualities which might have justified his elevation to the Chancellorship, except "that bow-wow manner and brazen front" then considered necessary for the Speaker of the House of Lords. That he "may deserve the *whisper* of approbation, but will never be saluted with the obstreperous Blast of the Clarion of Fame" proved a just forecast in regard to a judge whose career could be epitomised in the lines:—

"Adown the smooth, sequestered vale of life,
He kept the noiseless tenor of his way."

His brother's fighting tradition was, however, carried on by his grandson and heir who was at Waterloo. The barony still survives in martial hands.

Poets and Policemen.

Probably the least helpful thing one can do in a court of law is to plead poetic licence. It may be remembered how, not very long ago, a writer of libellous verse, convicted at the Cambridge Assizes, claimed that some of Tom Hood's poems were of a similar nature, and how Avory, J., acidly retorted: "If Tom Hood had written what you have written and had come before me I should have sent him to prison." Such is the spirit of English law in whose formal atmosphere all the nine Muses did not avail to help Byron or Shelley or Wilde. In this respect, the eccentric and picturesque poet who was recently sentenced at the Old Bailey for publishing obscene verse stands in more distinguished literary company than he might otherwise have been associated with. It was incidentally in this case that the Recorder spoke of words which "even a policeman" referred to by their initials. Perhaps he hardly did justice to the delicacy of the force. Not long ago, at the Guildhall Police-court, a constable insisted on writing down the insulting words to which he was testifying. "Was it something very bad?" asked Mr. Thoday, the clerk of the court. "Yes, sir," replied the witness, busily writing. After some moments the dreadful thing was at last handed up. "Well," said Mr. Thoday, "I cannot see anything so awful in it unless my standard of language is lower than that the constable is used to." Then he read it aloud.

In the Mass.

The mass murder trial at Nairobi which has ended in the condemnation to death of sixty natives, jars the humanitarian complacency of the modern mind more than it would have shocked our fathers long ago. For example, Sir Mathew Hale's observation upon certain penal statutes of Elizabeth's day is: "I have not known these statutes much put in execution, only about twenty years since at the assizes at Bury about thirteen were condemned and executed for this offence." Rougher conditions needed rougher remedies.

The Classics Transformed.

One must not laugh too loudly at the honest police officer who, giving evidence at the great "Lysistrata" prosecution at Los Angeles (it was doubted whether Aristophanes was pure enough for Hollywood), transformed Konesius into "Tony Cyrus" and Myrhhina into "Mariana." Before now such pearls have fallen from the Bench as well as the box. There was the Irish judge who once told a witness that he knew no more about the case than about "riding Greek goats," meaning thereby "writing Greek odes." Though perhaps, did we know, the real trouble may have been a cold in the head. No such excuse can be found for Lord Kenyon, C.J., who in a more classical age than this made up for lack of scholarship by flourishing indiscriminate Latin tags. Thus, in discharging a certain jury, he told them that they could go home confident that they had done their duty, saying to themselves "aut Cæsar, aut nullus."

POINTS IN PRACTICE

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Conveyance of an Interest in an Equity of Redemption—Stamp.

Q. 2412. In June, 1931, A and B (who are in no way related to each other) purchased freehold property as joint tenants and mortgaged the same to a building society. A now wishes to release to B his share in the "equity of redemption." The value of the equity of redemption is negligible, and if same is conveyed in the normal way, the stamp, under s. 57 of the Stamp Act, 1891, will be *ad valorem* on the value of the equity of redemption, plus the amount due on the mortgage, and it is desired to take advantage of s. 74 of the Finance (1909-10) Act, 1910, whereby the stamp on a voluntary conveyance of an equity of redemption is only *ad valorem* on the value of the equity conveyed. We shall be obliged if you will refer us to a precedent, or indicate an alternative method of dealing with the point.

A. Our subscribers seem to assume that the stamp duty on a conveyance of an equity of redemption by way of gift is *ad valorem* on the value of the equity conveyed. This is by no means certain. "Alpe," 21st ed., p. 144, in a note on s. 57 of the Stamp Act, 1891, says: "A conveyance of property subject to a mortgage in consideration of natural love and affection or by way of gift, containing a covenant by the grantee to pay the mortgage debt and interest, is chargeable under this section with *ad valorem* conveyance duty on the amount due for principal and interest. Since the passing of the Finance (1909-10) Act, 1910, such a conveyance may, however, be chargeable under s. 74 of that Act on the value of the equity where such value exceeds the amount of the mortgage debt." The opinion has been expressed in "Further Points in Practice," Pt. X, s. 3, case 6, that the *ad valorem* duty should be on the value of the equity only. The stamp will have to be adjudicated (Finance (1909-10) Act, 1910, s. 74 (2)). We have been unable to trace a precedent in point. It is suggested that A should by way of gift assign to B his equitable interest in the property (by way technically of a release) and that in the same deed A and B should convey the legal estate, subject to the mortgage debt and term, to B, as absolutely entitled in equity, free from the trust for sale, and that B should covenant to pay principal and interest and indemnify A from the same. The stamp on this document would, according to the view expressed by "Alpe," be *ad valorem* on half the mortgage debt, seeing that the equity is of trivial value, plus ten shillings in respect of the assurance of the legal estate. If the other view mentioned is correct, then the stamp will be on half the value of the equity, plus ten shillings.

County Borough—Sale of Land not required for Recreation Ground.

Q. 2413. A is purchasing a piece of land from a municipal corporation which is an administrative county. The piece of land was purchased by the council to be used as a recreation ground, but ultimately the council obtained land more suitable for that purpose. The corporation claim to sell under s. 175 of the Public Health Act, 1875, on the ground that the land was acquired under the powers of that Act and is no longer required for the purpose. Apparently evidence should be furnished that the Minister of Health does not propose to give any direction under s. 175 which would preclude the sale, and that the land has never been dedicated by the corporation to the use of the public. If this is done it seems a good title can be made, but reference to the appropriate form of conveyance would be welcomed.

A. A municipal corporation is debarred from selling any land without the consent of (the Treasury now) the Minister of Health unless authorised by statute to do so: Municipal Corporations Act, 1852, s. 108 (see *Davies* v. *Leicester Corporation* [1894] 2 Ch. 208). As s. 175 of the Public Health Act only authorises the council as local authority to sell unless (the Local Government Board now) the Minister of Health otherwise directs, it is considered that the proper, or what may be the "clean," course is for the council to get an actual consent of the Minister to the sale. If this is done it is only necessary to recite the consent of the Minister of Health to the sale by an instrument in writing, dated, etc., and take an acknowledgment and undertaking as to production and safe custody of the document. There is a precedent of a sale by municipal corporation: Vol. 12 of Encyclopædia of Forms. The purchaser could not, it is considered, object if the written instrument merely intimated that the Minister did not otherwise direct. In this case the conveyance should recite that the land was purchased under the powers conferred by the Public Health Act, 1875, for public pleasure grounds and that it was no longer required for that purpose. The instrument indicating that the Minister gave no directions should be recited and an acknowledgment and undertaking for production and safe custody of it given. We regret we cannot indicate a precedent in this form. It is considered, however, that the Minister, if asked, would give a simple consent to the sale of the land.

Rejection of Proof in Voluntary Winding Up.

Q. 2414. A liquidator in a voluntary winding up rejects a proof. Within how many days must the creditor apply to the court to have the decision of the liquidator varied? The twenty-one days fixed by r. 106 of the Companies (Winding Up) Rules, 1929, appears to apply only to a winding up by the court: See "Stiebels Company Law," Vol. II, p. 1146).

A. There is no definite authority upon the above point, as r. 104 (doubtless referred to in error in the question as r. 106) only applies to winding up by the court, as suggested. Unless special reason could be shewn, however, it is doubtful whether the time would be extended, and r. 104 would therefore apply by analogy. See Palmers' "Company Precedents," 13th Ed., Pt. II, p. 880.

Voluntary Settlements—Stamp Duty.

Q. 2415. A, a married man, living in Canada, and having children, has executed a settlement of his reversionary interest in a moiety of stocks, funds and securities, standing in the names of trustees. This reversionary interest was assigned to two trustees, upon trust when received to invest and pay the income to the settlor for life, and on his death to hold the trust fund upon such trusts as the settlor should appoint, and subject thereto for all the children or any the child of the settlor who should attain the age of twenty-six years. The settlement contained a power of revocation. On the settlement being presented to the stamping authorities with the payment of 5s. per cent. settlement duty on the present value of the reversionary interest, the Controller of Stamps stated that the deed must be adjudicated, and asked whether

the settlor was a bachelor, to which it was of course replied in the negative. We do not know the object of this enquiry, unless it was for the purpose of assuming a valuable consideration. Nothing was stated in the settlement as to the settlor's condition, nor was it made for any expressed consideration. The Controller then assessed the stamp duty at £1 per cent. on the ground that the settlement was a voluntary disposition under s. 74 of the Finance (1909-10) Act, 1910, and after some correspondence the Controller still maintains his view. We are rather inclined to the view that the Controller is right, but in another case about five months ago, a settlement executed by a spinster client of ours was presented to Somerset House with the payment of 5s. per cent. settlement duty, and this was accepted without any request for adjudication. This latter settlement was of two sums of Government stock, the trustee being the Public Trustee, and the trusts being for the settlor for her life with power to appoint the capital, and subject thereto for her nieces. We cannot reconcile the two cases, though of course it might be said that in the latter case an adjudication should have been asked for. Your valued opinion is sought as to whether the Controller of Stamps' assessment is correct, and, if so, whether it is part of a solicitor's duty to re-open the other case where the Revenue accepted the 5s. per cent. duty.

A. We agree that the duty assessed on the settlement made by A is correct. We are disposed to believe that the broad proposition may be stated that no voluntary settlement can, since the operation of s. 74 of the Finance (1909-10) Act, 1910, be liable to duty as a "settlement" under the schedule to the Stamp Act, 1891. We are unable to see any object in the enquiry as to whether the settlor was a bachelor. With regard to the settlement made by the spinster we are of the opinion that this document was liable to duty under s. 74 of the Finance (1909-10) Act, 1910, and that the stamp should have been adjudicated pursuant to sub-s. (2) of that section. Whether the rate of duty paid was in fact correct or not we are unable to judge. We observe that the settlement was of two sums of Government stock. If the stocks were stocks of the Canadian Government inscribed in books kept in the United Kingdom or were any colonial stocks to which the Colonial Stock Act, 1877, applies, then the rate of 5s. per cent. assessed would be correct. (See schedule to the Stamp Act, 1891, sub-title "Conveyance or Transfer whether on Sale or otherwise," as amended by s. 36, sub-s. (2), of the Finance Act, 1920.) In view of the fact that the stamp duty on a voluntary disposition must be adjudicated in order that the disposition shall be deemed duly stamped, we are of the opinion that it is the duty of the solicitor concerned with the former settlement to re-open the matter and present the document for adjudication, and that he is not relieved from this duty by the fact that the stamp office did not demand adjudication.

Loans by Company to Directors.

Q. 2416. The following clauses are contained in the memorandum of association of a private trading company (not a lending company) :—"(*a*) To receive from any shareholder or shareholders, director or directors of the company, or from any other person or persons, or from any corporation, money on deposit at interest or otherwise, and to lend money to customers and others dealing with the company either with or without security. (*b*) To invest and deal with the money of the company not immediately required for the purposes of the company upon such securities and in such manner as may from time to time be determined." One of the directors wishes to borrow money from the company for his own private purposes on the security of shares held by him in the company. Can he do this? Section 45 of the Companies Act appears only to relate to the prohibition (except as therein mentioned) of a company lending money to persons to enable them to buy shares in that company, and would thus appear to have nothing to do with the point. Section 128, however, seems to imply that directors may borrow money from their company for their own private purposes and that the right to borrow depends upon the wording of the memorandum of association. Your views generally upon the ability of directors to borrow money from their company for their own private purpose upon the security of shares held by them in the company is requested, and particularly whether the clauses in the memorandum above referred to are sufficient authority. It is submitted that lending money in this manner might, if the borrower made default in repayment, in effect result in the company becoming purchasers of its own shares.

A. The above clauses in the memorandum of association must be read in conjunction with the common form articles relating to the company's lien on its shares, which are doubtless included in the articles of association. The result is that the company will obtain ample security even if the certificates are not deposited with the company, although the omission of this precaution is not recommended: see *In re National Bank of Wales, Ltd.* [1899] 2 Ch. 629. It is agreed that s. 45 is irrelevant, and that s. 128 authorises the proposed transaction in view of para. (*b*), *supra*, from the memorandum of association. The director can therefore borrow the company's money for his private purpose, and it does not follow (as suggested in the last paragraph of the question) that the company may eventually become a purchaser of its own shares. The latter must be held by the company pending a sale, and (in default of a purchaser) the shares cannot be forfeited, unless sanctioned by the court as a reduction of capital: see *Hopkinson* v. *Mortimer Harley & Co., Ltd.* [1917] 1 Ch. 646.

Intestacy—Issue of Uncles and Aunts.

Q. 2417. A bachelor died intestate leaving neither brother nor sister, nor parents nor grandparents, and the nearest living relatives are the children of uncles and aunts of the intestate on both his father's and his mother's side, and their issue. It seems quite clear from s. 47 (3) of the Administration of Estates Act, 1925, read in conjunction with s. 47 (1) (*l*) that the children of these uncles and aunts are entitled to share, but some of these children have also died leaving issue to take their parent's share. In my opinion this right is not conferred by the two sections of the Act above referred to, but there seems to be some doubt on the matter. How far does the expression "such issue to take through all degrees" contained in s. 47 (1) (*l*) affect the matter?

A. The issue of uncles and aunts of a person dying after 31st December, 1925, *do* take *per stirpes* by virtue of s. 47 (1) (*i*) and (3). Thus if there are three first cousins A, B and C, and two first cousins once removed, D and E (children of a deceased cousin) and three other first cousins once removed, F, G and H (children of another deceased cousin) there will be division into five shares of which D and E (subject to attaining twenty-one or marrying) will take one between them, and F, G and H (subject to like contingency) will take another share between them. If, say, both D and E die during infancy and unmarried, their contingent share will go to the other beneficiaries making four shares, instead of five, except as to any income or capital in respect of which the administrators have exercised their powers of maintenance and advancement. It is assumed that none of the deceased's uncles and aunts was of the half blood, i.e., was not half brother or sister only of deceased's father or mother.

Rating of Park Land—Mansion Unoccupied.

Q. 2418. A is the owner of a small mansion standing in a park of 19 acres. The mansion and park is each assessed separately to rates. Up to September last A occupied the mansion and park together and paid full rates on each. He also occupies the home farm adjoining, which is de-rated. He has always used the park for grazing and making hay for the dairy of cows kept at the home farm. In September last

A sold his furniture and closed the house on which no rates are now being paid, the property being "void." He lives in London, there being no house with the home farm which is managed by a bailiff. He has given notice for amendment of the valuation list in respect of the park on the ground that the same is now used as pasture land only and is not occupied together with a house, and asks that same be assessed as agricultural land and de-rated. We shall be glad to hear if, in your opinion, he is entitled to the relief he is seeking. We understand the assessment committee for the area in which the property is situate has recently declined to allow a similar appeal, but we do not know on what grounds the decision was arrived at. Surely A cannot be treated as occupier of the empty house?

A. We think at the moment the land is clearly agricultural land, and it is probable that some assessment committees would have treated it as such when the house was occupied. The difficulty is that the committee may think the house is likely to be reoccupied again with the park at an early date, and if the land was taken out of the list there would have to be a fresh proposal by the rating authority when it was desired to re-insert it. It is considered, however, the owner is strictly entitled to have the land de-rated as agricultural during the time circumstances remain as they are.

Covenants, Affirmative and Restrictive—REGISTRATION.

Q. 2419. Is it necessary to register the undermentioned covenants for the protection of the vendor in either the Land Charges Register or Local Land Charges Register, or both?

"For the benefit of the vendor and his successors in title owners and occupiers of the piece of land coloured green retained by the vendor and every part thereof, and so as to bind so far as is possible the property hereby conveyed the purchaser hereby covenants with the vendor that she the purchaser and the persons deriving title under her will (*a*) within one calendar month from the date hereof erect and for ever afterwards maintain a good and sufficient fence on those sides of the said piece of land hereby conveyed which are marked 'T' on the said plan (*b*) Not do anything which would hinder the overflow of water from the said well or spring to the said catchpit or to the pond already existing on the said piece of land coloured green retained by the vendor other than by taking water from the said well or spring for domestic or farm purposes."

Note.—The well or spring is on the plot being conveyed to the purchaser.

A. Covenant (*a*) is an affirmative covenant and the obligation does not pass to succeeding owners (*Austerberry* v. *Corporation of Oldham* (1885), 29 Ch. D. 750). Covenant (*b*) is a negative covenant and must be registered in the Land Charges Registry. The Local Land Charges Registry is not concerned with it. We believe it is usual when registering restrictive covenants to include such affirmative covenants as erecting and maintaining fences just as a matter of record.

Reviews.

The Annual County Courts Practice, 1932. Fifty-first Edition. Edited by His Honour Judge RUEGG, K.C., and H. P. STANES, Registrar of the Hanley and Stoke-upon-Trent County Court. Demy 8vo. pp. clvi and (with Index) 2,832. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 40s. net.

Things which have become necessities on account of their own merit are too often taken for granted. The issue of a new edition of the Annual County Courts Practice gives us an opportunity to praise this marvellous compilation, and express our gratitude for something which has become almost as necessary to county court practitioners as their daily bread. It succeeds in being more than a mere guide to the County Courts Acts and the cases, Rules and Forms, but a sort of complete encyclopædia of all matters which might arise in day to day practice. One is sometimes very grateful indeed to be able to find some knotty point which has arisen at the last minute covered by a reference work which is nearly always available, and points on the Sale of Goods Act, 1893, the Rent and Mortgage Interest (Restrictions) Acts, 1920-1925, and the Landlord and Tenant Act, 1927, to mention only a few, nearly always arise in this way. Illustrative of the pains which the learned editors have taken with this work is the fact that there are no less than four separate references to *Davy* v. *Magnus* [1931] W.N. 214, in which the Divisional Court held that the county court judge may amend under s. 87 of the County Courts Act, 1888, even where a landlord has asked for ejectment under s. 59 of the County Courts Act, 1888, instead of recovery of possession under s. 138. The present edition has been brought completely up to date and incorporates all rules and regulations affecting county courts made in 1931, including the County Court (No. 2) Rules, 1931, and the County Court (Service Abroad) Rules, 1931 (Order VIIa), both dated 21st December, and the Workmen's Compensation (No. 2) Rules, 1931, dated 16th December.

The Yearly County Court Practice. 1932 Edition. By EDGAR DALE, of The Middle Temple and South-Eastern Circuit, Barrister-at-Law, J. ALUN PUGH, of the Inner Temple and South Wales Circuit, Barrister-at-Law, and ADAM PARTINGTON, Group Registrar of the Ilford, etc., County Courts. Large crown 8vo. Vol. I. pp. ccxl and (with Index) 1,815. Vol. II, pp. xvi and (with Index) 900. London: Butterworth & Co. (Publishers) Ltd.; Shaw and Sons, Ltd. 40s. nett.; thin edition 45s.

The same praise that we have accorded to the "Annual County Courts Practice" is due to the editors of the "Yearly County Court Practice." The work is still published in its familiar two volume form, the first volume containing the County Courts Acts, Forms and Rules, and the second containing the enactments conferring special jurisdiction on county courts. It is unnecessary to draw invidious distinctions between the Yearly and the Annual Practice. Both are comprehensive and indispensable, and a preference for one or the other must always remain a matter of individual taste.

Elements of Conveyancing (with Precedents) for the Use of Students. Founded upon the Fourth Edition of Deane and Spurling's "Elements of Conveyancing." By JOHN F. R, BURNETT, of Gray's Inn, Barrister-at-Law. 1932. Royal 8vo. pp. xxxii, and (with Index) 544. London: Sweet & Maxwell. Ltd. 21s. nett.

The occasion of the removal of an ancient landmark is a sad one for the sentimentally inclined, but it is always some comfort to know that the old materials have been used in raising the new edifice. The high standard which the previous work attained made the present author's task all the more difficult, but he has nevertheless succeeded with praiseworthy completeness. The necessity for re-writing the book is dictated by the number of new and important cases decided on the Property Statutes, by the passing of new statutes like the Landlord and Tenant Act, 1927, and the Law of Property (Amendment) Acts, 1926 and 1929, and above all by the practical experience of the past six years of the working of the Acts and of students' difficulties in assimilating them. The first chapter, on the History of Conveyancing, has been left almost intact. The subject-matter of four other chapters has been adapted, amplified and brought up to date, and the Ancient Forms and Assurances of Copyhold have been preserved in their original form, the remaining Precedents being re-modelled. With these exceptions the work is new, and by reason of its intelligibility and comprehensiveness it should equal the success of the old.

Daniel's Law of Distress for Rent. Sixth Edition, 1932. By SYDNEY E. POCOCK, LL.B. (Lond.), of Gray's Inn and the Midland Circuit, Barrister-at-Law. Crown 8vo. pp. xxxvi and (with Index) 272. London: The Estates Gazette, Ltd.; Sweet & Maxwell, Ltd. 9s. 6d. net.

This book has had a wide circulation and no attempt has been made, in this edition, to enlarge its scope. The object of the publication throughout has been to provide a small but practical treatise on the law of distress for rent for auctioneers, house agents and bailiffs; but the effect of all recent cases and statutes of general importance has been incorporated in the text, and to the practising lawyer the volume offers in concise form a convenient book of reference. The forms for practical use which fill a substantial appendix are themselves extremely useful and may often save a great deal of time and trouble. All the important statutes from 1689 onwards bearing on the subject are embodied in the volume, together with the rules and such portions of statutes as are of collateral importance, e.g., the Agricultural Holdings Act, the Rent Restrictions Act and the National Insurance Act.

Books Received.

Mews' Digest of English Case Law. Second Edition. Seventh Annual Supplement, containing the Cases reported in 1931. By AUBREY J. SPENCER, Barrister-at-law. 1932. Royal 8vo. pp. xxiii and 396. London: Sweet & Maxwell, Limited; Stevens & Sons, Limited. 20s. net.

"*The Times*" *House of Commons Guide*, 1931. Royal 8vo. pp. (with Index) 152. London: The Times Office. 2s. 6d. net.

De Omnibus Rebus. By the late D. F. DE L'HOSTE RANKING, M.A., LL.D. Selected and edited by ROBERT A. HARTING, F.C.A. 1932. Demy 8vo. pp. x and (with Index) 207. London: Gee & Co. (Publishers) Limited. 7s. 6d. net.

English Law and its Background. By C. H. S. FIFOOT, M.A., of the Middle Temple, Barrister-at-Law. 1932. Demy 8vo. pp. xvi and (with Index) 279. London: G. Bell and Sons, Ltd. 10s. 6d. net.

Obituary.

MR. C. S. WILES.

Mr. Charles Smyth Wiles, retired solicitor, of Southsea, died recently at the age of eighty-six. Mr. Wiles was a well-known Lincolnshire solicitor, having been for many years a partner in the firm of Messrs. Wiles and Smith, of Horbling and Donington. He retired several years ago, and removed to Southsea that he might indulge in yachting.

MR. W. N. BUBB.

Mr. William Neale Bubb, retired solicitor, of Cheltenham, died recently at the age of eighty-two. He was educated at Cheltenham College, and on leaving he joined his father's firm. He was admitted a solicitor in 1872, and continued as a partner in the firm of Messrs. Bubb & Co. until about five years ago.

MR. W. W. WARD.

Mr. William Welsford Ward, retired solicitor, of Clifton, died on Friday, the 12th February. He was educated at Radley College, and Magdalen College, Oxford, and was for many years a member of the well-known firm of solicitors, Messrs. Osborne, Ward, Vassall & Co., of Bristol.

MR. L. C. T. ROOM.

Mr. L. C. T. Room, solicitor, of Bouverie-street, London, E.C.4, died suddenly on Saturday, the 13th February. Mr. Room, who was admitted in 1906, was a member of the firm of Messrs. Watson, Sons & Room, of 11, Bouverie-street, E.C.4, and Hammersmith, W.6.

Notes of Cases.

House of Lords.

Attorney-General (on behalf of His Majesty) *v.* Jackson.

22nd February.

EXECUTOR—INSOLVENT ESTATE—RIGHT OF RETAINER—PRIORITY OF CROWN DEBT—BANKRUPTCY ACT, 1914, S. 33 (1)—ADMINISTRATION OF ESTATES ACT, 1925, SS. 34, 57.

Appeal from the Court of Appeal *In re Cockell* [1931] 1 Ch. 389.

The respondent Mrs. Jackson, as the sole executrix and universal legatee under the will of N. A. L. Cockell, asked by this summons to have it determined whether her right of retainer for debts owing to her by the testator might be exercised against and in priority to the Crown's preferential claim for income tax under s. 33 (1) (*a*) of the Bankruptcy Act, 1914, and s. 34 of the Administration of Estates Act, 1925, and the first schedule to that Act. The testator died on 19th June, 1929, the value of the estate being about £1,000, but there were debts far larger than the amount of the estate, and the Crown had a claim to be a preferential creditor for a sum in respect of income tax and super tax amounting to over £4,000. The executrix claimed to retain the whole of the assets to satisfy her debt. The Crown disputed the right of retainer.

CLAUSON, J., held that the executor's right of retainer might be exercised in priority to the Crown's claim for income tax, and his decision was affirmed by the Court of Appeal by a majority, ROMER, L.J., dissenting. The Crown now appealed.

Lord ATKIN, in delivering judgment, said he thought that the question could be solved by a short consideration of the common law right of retainer. He attached great importance to the fact that the saving in s. 34 (2) of the Administration of Estates Act, 1925, applied to the right to prefer creditors in the same words as it applied to the right of retainer. His lordship then referred to a series of authorities ending in *In re Ambler* [1905] 1 Ch. 697, which he thought should not be followed. He was of opinion that to the extent to which the Crown's claim for taxes was given priority in bankruptcy, it was a debt of higher degree than that of the executrix in this case, that she could not exercise her right of retainer in priority to such claim, and that the question in the summons should be answered accordingly. The appeal should be allowed and the judgments below set aside.

Lord TOMLIN gave judgment to the same effect, and Lords BUCKMASTER, WARRINGTON OF CLYFFE and MACMILLAN concurred.

COUNSEL: *Sir Wm. Jowitt*, K.C., and *J. H. Stamp*; *F. Morton*, K.C., and *Daynes*, K.C.

SOLICITORS: *Solicitor of Inland Revenue*; *Keene, Marsland, Bryden & Besant.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division

In re **James: Grenfell *v.* Hamilton.**

Farwell, J. 17th February.

WILL—CHARITABLE TRUST—GIFT TO COMMUNITY—HOME OF REST—*Cy-près.*

Summons.

By her will Mrs. Isabella Joanna James, who died on 13th October, 1930, devised a freehold house at Truro and bequeathed the furniture and effects therein and the sum of £6,000 to her trustees upon trust to establish a Home of Rest for the Sisters of the Community of the Epiphany at Truro, the clergy of the diocese and such persons as the Mother Superior of the Community should from time to time nominate or appoint; and after giving certain directions as to the establishment of the home of rest, she directed that the

sum of £6,000 should be invested and the income applied for the maintenance and repair of the home. This summons was taken out by the trustees of the will to have it decided whether the devise and bequest were good charitable gifts, and, if so, whether they could be carried out.

FARWELL, J., in giving judgment, said the words which controlled the meaning of the gift were "Home of Rest," and such words were *primâ facie* charitable. In his opinion a home of rest was in the nature of a hospital for the alleviation of those who were in need of rest and not of medical treatment, and if so it came within the provision of the Statute of Elizabeth. It was, however, contended that the gift for the benefit of persons nominated by the Mother Superior was too wide to be charitable, but if the main object was charitable the gift would not fail because some of the objects were not necessarily charitable. He thought that the duty of the Mother Superior would be to nominate only persons who were fit for a charitable purpose, and the fact that the words were wide enough to permit of the appointment of other persons did not make the gift non-charitable. If the fund was insufficient, the question would arise whether the trust could be carried out *cy-près*. He would declare the gift to be a good charitable gift and direct an inquiry whether it was possible to carry out the trust.

COUNSEL: *Russell Gilbert; Wilfrid Hunt; Stafford Crossman; Gover*, K.C., and *G. D. Johnston*.

SOLICITORS: *Sydney James*, for *J. M. Bennetts*, Truro; *Gregory, Rowcliffe & Co.*, for *Sitwell & Harvey*, Truro; *the Treasury Solicitor*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Rex *v.* Editor, Printers and Publishers of "The News of the World": *Ex parte* Kitchen.

Lord Hewart, C.J., Avory and Hawke, JJ. 1st February.

CONTEMPT OF COURT—NEWSPAPER ARTICLE—DEFENCE FORESHADOWED—UNFOUNDED APPLICATION—RULE *nisi* DISCHARGED.

Their lordships discharged a rule *nisi* calling on Sir William Emsley Carr, the editor, and News of the World, Ltd., the printers and publishers, of *The News of the World*, to show cause why a writ of attachment should not issue for alleged contempt of court in publishing in the issue of *The News of the World*, of the 17th January, a paragraph which, it was contended, was calculated to prejudice the fair trial of George Kitchen, who was then under remand on a charge of murdering his son, James Kitchen. The paragraph complained of was in the words: "It was suggested that he met his death in an accidental manner through the family dog, Prince, knocking over a fully loaded double-barrelled gun left against the barn door." When the rule was granted it was alleged that, after George Kitchen had appeared twice only before the magistrates and only formal evidence had been given, *The News of the World* published the paragraph which added to the report of the formal evidence given what purported to be a statement of the defence which would be put forward. It was suggested that the statement was without foundation and calculated to prejudice the defence. Kitchen was arrested on the 13th January, and the case was opened on the 26th January.

Lord HEWART, C.J., said that no doubt in some circumstances, and in some cases, the publication beforehand of what was said to be the defence of an accused person might amount to contempt of court. They were dealing, however, not with general principles, but with the question whether those words came within the mischief to which contempt proceedings were directed. They now had it from Counsel supporting the rule that last December something of the same sort had actually been said to the police by the accused man himself. In *Reg.* v. *Payne* [1896] 2 Q.B. 580; 40 SOL. J. 416, Lord Russell of Killowen said: "I wish to express the view which I entertain that applications of this nature have in many cases gone too far. No doubt the power which the court possesses in such cases is a salutary power, and it ought to be exercised in cases where there is real contempt, but only where there are serious grounds for its exercise . . . the applicant must show that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending." He was of opinion that the application in the present case was unfounded and the rule would be discharged.

AVORY and HAWKE, JJ., agreed.

COUNSEL: *Sir Albion Richardson*, K.C., and *Theobald Mathew* showed cause; *Alban Gordon* supported the rule.

SOLICITORS: *Oswald Hickson, Collier & Co.; Withers & Co.*, for *Metcalfe, Copeman & Pettefar*, Wisbech.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Kricorian *v.* Ottoman Bank.

MacKinnon, J. 15th February.

BANKING—OTTOMAN BANK—CURRENT ACCOUNT—INTEREST—WITHDRAWALS—WHETHER IN GOLD OR PAPER CURRENCY.

In this case the plaintiff, in September, 1913, deposited at the defendants' branch at Smyrna 12,500 piastres in gold on the conditions set out in a deposit book. On various dates he had withdrawn sums amounting to 4,000 piastres. He now claimed £76 15s. 7d. as the value of the balance of 8,500 piastres; and he also claimed compound interest on that sum. He contended that it was an express or implied term of the contract that the sum deposited would be repaid on a gold basis, and on the 1st April, 1930, he demanded repayment of the balance of his account in gold. The defendants, however, refused to repay in anything but the paper piastres which at the time were the currency at Smyrna. The defendants contended that the contract did not provide for repayment on a gold basis, and, alternatively, said that by decree the Turkish Government had ordered that all debts within their territory should be repayable in the current paper currency. On that basis the amount now due to the plaintiff would amount to between £11 and £12, and, while denying liability, the defendants paid that amount into court. The material clauses of the deposit book were as follows: "Deposits and Withdrawals. (1) The accounts will be kept in gold piastres; all deposits in other currencies will be converted into gold piastres at the average rate of the day. (2) The deposits and withdrawals will be of a quarter of a Turkish pound (25 gold piastres) or its multiples."

MACKINNON, J., said that the material question was what was the law in Turkey which was applicable. Had he had only the Turkish decrees before him, he would have had great difficulty in deciding; but decisions of the Turkish courts had been cited and evidence of Turkish lawyers had been given showing that even if the original contract had been to repay in gold the debt could, in consequence of the decrees, be satisfied by payment in paper. If interest was not allowed the Turkish courts regarded a deposit as a bailment and the actual money deposited must be returned, but if interest was allowed, as in the present case, they regarded it as a loan. There would be judgment for the plaintiff, therefore, for £11 10s., with costs up to date of payment in; and the defendants would have the costs since the date of payment in.

COUNSEL: *Porter*, K.C., and *J. Serrell Watts*, for the plaintiff; *Raeburn*, K.C., and *I. W. G. Barry*, for the defendants.

SOLICITORS: *W. & W. Stocken; Bischoff, Coxe, Bischoff and Thompson*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

J. Taylor & Sons, Ltd. *v.* Union Castle Mail Steamship Co., Ltd.

MacKinnon, J. 17th February.

Carriage by Sea—Mixed Cargo—Dangerous Article—Castor Beans—Mixed Sweepings after Discharging—Intermediate Sales—Horses' Death from Castor Poisoning—Shipowner not Liable.

In this case the plaintiffs, J. Taylor and Sons, Limited, forage merchants, claimed from the Union-Castle Mail Steamship Co. Limited, £430 damages, resulting from alleged negligence in the following circumstances. In September, 1930, the steamship "Llanstephan Castle," belonging to the defendants, arrived in London from Africa with a cargo which included 3,584 bags of maize, and bags of coffee, wheat, sesame seed and castor seed, all stowed in the same hold. The cargo was discharged by the Port Authority who, in due course, advised the defendants that there were seventy-nine bags of loose collected cargo from the vessel, and that those bags contained castor seed as well as maize and wheat. The defendants issued a delivery order to a firm who held the bill of lading for the 3,584 bags of maize, and that firm gave the present plaintiffs a delivery note for fifteen bags. The plaintiffs took the fifteen bags, which were in fact part of the seventy-nine bags of loose cargo collected, and mixed their contents with other grain in the ordinary course of business. The plaintiffs then sold a parcel to a customer who fed his horses with the grain, with the result that six horses died and twenty-two other horses were made ill owing to castor poisoning. The owner of the horses claimed damages from the plaintiffs, and they settled the claim for £430 and now sought to recover that sum from the defendants. It was admitted that if the defendants were liable at law the sum claimed was correct.

MacKinnon, J., said that the castor seed was shipped with a notice in red ink to the effect that it must be kept separate from other produce. Many cases had been cited in argument dealing with the duty of a person who delivered to another a dangerous article to give warning of its nature. The extent of the obligation must vary with the occupation of the person delivering the article, and the question in each case must be whether the person delivering the article knew, or as a reasonable man ought to have known, that it was dangerous. The defendants in this case were not dealers in grain and experts in that particular trade, but were shipowners carrying goods of every description. He was satisfied that the knowledge of the danger of castor beans was not widely spread, and he thought, therefore, that it would be wrong to hold shipowners liable for not warning forage dealers, who might reasonably be supposed to have expert knowledge themselves.

Counsel: *Dickinson*, K.C., and *Willink*, for the plaintiffs; *Porter*, K.C., and *Charles Stevenson*, for the defendants.

Solicitors: *Thomas Cooper and Co.; Parker, Garrett and Co.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Ronaasen *v.* Arcos Ltd.

Wright, J. 19th February.

Contract—Timber—Not Strictly within Specification Measurements—Right of Rejection—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 13, 30.

Special case stated by an umpire.

The parties in this case entered into two contracts in November, 1929, for the sale by Arcos Ltd. to Ronaasen of certain quantities of wood. The goods were to be shipped during the summer of 1930. The question was whether the buyers were entitled to reject the timber supplied, notwithstanding an arbitration clause in the contract providing that the goods should not be rejected. The umpire found that, although the goods tendered were not strictly within the specification they were so near as to be commercially within it, and he held, therefore, that there was no right to reject.

Wright, J., said that the sellers knew the purpose for which the goods were required, and the umpire had held that the warranty under s. 14 of the Sale of Goods Act was satisfied. But that left the question whether the goods complied with s. 13 of the Act, and even if some of the goods were of the contract description the buyers would still be entitled under s. 30 to reject the whole, if some did not. The umpire found that the goods were suitable for the purpose for which they were required and were commercially within and merchantable under the specification. If parties, however, inserted definite measurements in a contract it must be enforced accordingly. The word "about" was often used in such contracts, but was absent in the present case; and no umpire or judge was at liberty to dispense with the terms of a contract. The only possible variation which could be allowed would be one that was so microscopic as to come within the maxim *de minimis non curat lex*. He was satisfied that in this case the variation from the contract dimensions went far beyond the maxim. The award was wrong, and the buyers were entitled to reject.

Counsel: *Le Quesne*, K.C., and *Arthur Davies*, for the buyers; *van den Berg*, K.C., and *Gordon Alchin*, for the sellers.

Solicitors: *Nisbet, Drew & Loughborough; Wynne-Baxter & Keeble.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Griffiths.

Lord Hewart, C.J., Avory and Humphreys, JJ.

8th February.

Criminal Law—Nature of Sentence—Not to be Affected by Fact of Previous Convictions—Punishing Same Offence Twice.

In this appeal George Edward Griffiths, who was convicted before Mr. Justice McCardie at Leeds Assizes on two indictments, one charging him with bigamy and the other with office breaking, and was sentenced to twelve months' imprisonment on the bigamy charge and four years' penal servitude concurrently for the office breaking charge, now appealed against conviction and sentence.

Lord Hewart, C.J., giving the judgment of the court, and dealing with the bigamy charge, said that the appellant married his wife in 1919, and after about six months his wife left him and went to live with her mother. It was a case where the wife had been continually absent for seven years, and there was no evidence that he knew her to be alive within that time. The court did not think that any useful purpose would be served by ordering a re-trial, because there was no evidence on which the appellant could be convicted of bigamy. The conviction for bigamy would therefore be quashed. With regard to the sentence of four years' penal servitude, the offences which Griffiths admitted were breaking and entering two offices and stealing money and goods. Though the court was told that he admitted fifteen other cases, the evidence before the court was quite unsatisfactory, and at no time was the prisoner asked if he desired them, or any of them, to be taken into consideration. The judge (if he was correctly reported) permitted himself to say: "I have looked into your record, which illustrates the unfortunate effect of lenient sentences in the past, not only by magistrates but also by judges, and I think it illustrates, too, the unfortunate effect of unnecessary reductions of sentence by the Court of Criminal Appeal." That court never reduced a sentence unless the reduction was necessary, and where it was necessary in the interests of justice that court was under a statutory duty to reduce sentences. The sentence in the present case, as the

remaining observations of the judge (if correctly reported) showed, was based on the view that where a man had been previously convicted a subsequent sentence must of necessity be heavier than the previous sentence, whatever the nature of the offence. As that court had frequently pointed out, a man was not to be twice punished for one offence, and it did not in the least follow that a subsequent sentence should be heavier than an earlier one. The sentence in the present case would be reduced to one of eighteen months' imprisonment, with hard labour, which, leave to appeal having been given, would date from the date of conviction.

COUNSEL: *R. H. Turton*, for the appellant; *E. A. Hawke*, for the Crown.

SOLICITORS: *The Registrar of the Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Societies.

University of London.

THE NEW DOMINION STATUS.—II.

On 16th February Professor J. H. Morgan, K.C., delivered the second of his three Rhodes Lectures in the Great Hall of University College.

Professor Morgan devoted this lecture to a consideration of the possible significance of the appointment of Mr. Stanley Bruce as Resident Minister of the Australian Commonwealth in London. This appointment, he said, might prove to be the solution of a problem which had perplexed Imperial statesmen since 1907. The problem—that of continuous consultation in all important matters between the Dominions and the Home Government—had become imperative through the destructive resolutions of the Imperial Conferences of 1926 and 1930, which had sought to raise the status of Dominion Governments by depressing that of Great Britain.

In April, 1917, and July, 1918, the Imperial War Conference had resolved to perpetuate the Imperial War Cabinet and the annual session of the Imperial Conference. The Prime Ministers of the Dominions had been unanimously in favour of this step and great faith had been placed in it, but it had not been taken. The Imperial Cabinet had not sat since 1919 and the Imperial Conference had met only at intervals of three or four years. This result had, perhaps, not been surprising, for the War Cabinet had sat in an environment of political truce very different from that of peace time. The Imperial Conference, as a continuance of the War Cabinet, had split as on a rock, for it no longer had the unanimity of war-time to enable it to keep the inexorable rule that in any Cabinet the majority vote must bind that of the minority. (Professor Morgan affirmed that the recent agreement of the British Cabinet to differ did not abrogate the rule but merely proved it by exception.) The Dominions had always felt the strongest objection—as they had shown at Conferences held long before the War—to any arrangement by which a Dominion could be out-voted. General Smuts had expressed this point of view very vigorously in 1921 when South Africa, alone of the Dominions, had refused to recognise the right of British Indians to citizenship of the Empire; he had stated that if South Africa were bound by the votes of the other Dominions in this matter, she would suffer a derogation of her status. The agitation for organic unity in the Empire had, in fact, never come from the Dominions but had been confined to a little group of doctrinaires in this country.

PREVIOUS ATTEMPTS AT CO-ORDINATION.

Since the War there had been no concerted efforts at co-operation between the Dominions and the Mother Country in an Imperial policy except for one or two intermittent experiments. For instance, a British Empire delegation had assembled at the Conferences of Paris and Washington to negotiate certain treaties. There had, however, been endless discussion. In June, 1924, Mr. J. H. Thomas, then Secretary of State for the Colonies, had suggested some sort of a machinery through which public opinion in the whole of the Empire might influence Imperial policy. He had proposed that Dominion representatives at future Imperial Conferences should have a mandate to commit their Parliaments, and also that they should be chosen from the Oppositions as well as from the Governments of their Dominions. This suggestion had fallen on stony ground, for reasons which Mr. Morgan explained, the principal one being that the Conference would then be a new body with power superior to that of Dominion Parliaments.

Even the holding of conferences at closer intervals would not, said the lecturer, bridge the gaps which interrupted the continuity of consultation, and still less would it secure continuity of policy. Dominion representatives at a conference were accountable to their respective Parliaments, which were not elected at the same time, nor for the same term of years. Even if they were, they would be liable to the casualty of a dissolution—like our own Parliament. The resolution of an Imperial Conference might at any time be frustrated by a reversal of policy, as the project for the Singapore base had been frustrated by the change of the British Government in 1924. The Dominion Parliaments and our own were like so many clocks all keeping different time, and synchronisation of political opinion for any ascertained period was impossible.

Uncertainty as to the degree of discretion with which a Dominion Prime Minister might be trusted had, in the lecturer's opinion, had far more to do with the failure to evolve the machinery of consultation than had any sensitiveness on the part of the Dominions about want of consideration by the British Government. The Dominions showed more disinclination to accept joint responsibility for Imperial and foreign policy than they showed inclination to claim it. The sterile conception of "veto, not vote" prevailed. The Statute of Westminster, moreover, had done much to discredit the collective authority of Imperial Conferences, as the Balfour formula had been adopted by a spurious unanimity under great pressure from the British Government.

DIRECT AUDIENCE BY DOMINION MINISTERS.

One of the most remarkable developments in constitutional practice had been the rise in the status of Dominion Prime Ministers since, in the War Cabinet, they had met the British Prime Minister on an equal footing. The Secretary of State for the Colonies had consequently been extruded from the exercise of any Imperial control, and the Governor-General, hitherto his agent, had been side-tracked. The result had been the "regalisation" of the Governor-General, who now had to act solely on the advice of his Ministers. Moreover, he might be appointed on the nomination of those ministers from among the citizens of the Dominion he governed, without the intervention of the Secretary of State. The Dominion Prime Ministers had now the right to tender advice direct to the King, but the ubiquity of the King was a legal fiction and the practice that communication between ministers and monarch should be oral had enormous practical importance as the basis of the immense and unobtrusive services which the Sovereign rendered to the State.

Mr. Bruce's appointment, concluded the lecturer, represented the maturity of a suggestion which had been made again and again before the war by English statesmen, particularly Mr. Asquith and Lord Milner. It meant that for the first time in our history a Dominion Cabinet would have direct audience of the King whenever it wished to tender advice. Mr. Bruce as High Commissioner was a mere executive instrument with no initiative and claiming no confidence of His Majesty, but Mr. Bruce as Resident Minister enjoyed that confidence in full. Perhaps his high functions would not stop there, and in all matters affecting his Dominion he would be called into council by the British Cabinet.

The Birmingham Law Society.

The Annual General Meeting of the Society was held at the Law Library, Birmingham, on Wednesday, the 24th February, when the 113th annual report of the proceedings was presented. The report, which dealt with the year ending 31st December, 1931, may be summarised as follows :—

The membership of the Society shows an increase of three as compared with last year, the number on the register on the 31st December, 1931, being 427.

The following members have died : Sir Samuel Talbot and Messrs. A. S. Bennett, F. S. Bowen, A. W. Freeman, E. C. Rogers, J. S. Sharpe and J. Slatter. Mr. A. S. Bennett became a member of the Society in 1882, served on the Committee for many years, and was President of the Society in 1919-20.

Mr. A. H. Coley and Mr. R. A. Pinsent have continued to represent the Society on the Council of The Law Society.

The income and expenditure account shows a credit balance of £582 0s. 9d., as against £560 3s. 6d. last year.

The interest on the investments representing the reserve fund, which is invested annually, amounted for the year 1931 to £305 10s. During the year no investment was made, the balance on the income and expenditure account and the interest on the investments being utilised to find the deposit paid in connexion with the purchase of the new premises.

The lecture room has been let on sixty-two occasions during the year, as against forty-nine last year.

Eleven thousand four hundred and sixty-eight books have been issued during the year.

The reports and statutes and serial legal publications have been purchased as usual. New editions of all important text-books and volumes of precedents have been acquired, and copies of many of these have been added to the Reference Department.

Medals and Prizes.

No candidate qualified to receive the Gold Medal, and consequently the Horton Prize was not awarded.

Mr. J. K. Walker (articled to Mr. S. J. Grey) obtained Second Class Honours and was awarded the Bronze Medal. Mr. G. M. Butts (articled to Mr. T. H. Cleaver); Mr. C. H. Russon (articled to Mr. F. H. Pepper); and Mr. E. J. Sadler (articled to Mr. C. R. M. Parr) also obtained Second Class Honours during 1931, and all of these candidates have been awarded a prize of books to the value of three guineas each.

Mr. J. Carslake (articled to Mr. H. B. Carslake) and Mr. E. H. D. Thompson (articled to Mr. S. Hosgood) obtained Third Class Honours, and they have been awarded a prize of books to the value of two guineas each.

Solicitors' Clerks' Pension Scheme.

The Solicitors' Clerks' Pension Scheme has now been inaugurated and copies of the memorandum circulated to all solicitors.

The scheme has not so far received the support it deserves, and it is hoped that members will not only inform their clerks of its existence, but encourage and assist them to join it.

Solicitors' Bills.

The Law Society's Bill referred to in last year's report came up for second reading in the House of Commons on the 20th February, 1931, but unfortunately the debate upon it was not concluded at the rising of the House on that day. Attempts later to secure a second reading in the House of Commons have failed. Sir John Withers's Bill was read a second time in the House of Commons in January, 1931, but neither Bill had made any further progress before Parliament was dissolved.

In December last the committee received from The Law Society a draft of a new Bill which was being put forward by Sir John Withers, the main points of which are :—

(1) That the Council of The Law Society has power with the concurrence of the Master of the Rolls to make rules for the professional practice, conduct and discipline of solicitors, and that such rules shall include provision for separate banking accounts by solicitors for their clients' money and for regulating the way in which such accounts should be kept.

(2) That an annual practising certificate should not be issued to a solicitor until he had lodged a statutory declaration or had produced a certificate from a qualified accountant that his accounts had been kept in accordance with the rules laid down under the Act.

This Bill will shortly be laid before the Provincial Law Societies for their consideration and will be subsequently submitted to The Law Society in general meeting.

Library Premises.

During the year the sub-committee continued to pursue negotiations with regard to new premises.

They reported that the Trustees of the Temperance Hall, Temple-street, were willing to sell their interest in that building, and upon surrender of that interest a new lease could be obtained for a term of ninety-nine years at a ground rent of £300 per annum and subject to an outlay of £10,000. The term for which the Temperance Hall is now held is twenty-one years unexpired from the 25th March last.

The Committee went fully into the matter and recommended that it should proceed.

It is estimated that it will be necessary to raise on loan, from members of the Society, a sum of not less than £16,000 to enable the reconstruction work to be completed. The proposals as to the manner in which such a loan should be secured to the members, and also consequential amendments in the Society's Memorandum and Articles of Association, are receiving the careful consideration of the Committee.

Poor Persons Procedure.

The Committee nominated under the Poor Persons Rules, 1925, have continued to carry on their work during the year.

Four meetings of the full Committee were held during the year, and thirty-eight meetings of the rota members. The number of applications to the Committee was 431, an increase of sixty-seven over last year; certificates were granted in 147 cases, as against 100 in 1930—an increase of forty-seven. Ninety-nine cases were disposed of during the year, the poor persons being successful in seventy-seven cases, and unsuccessful in three cases, while in nineteen cases the proceedings were abandoned by the applicants.

The Committee tender their thanks to the members of the profession, both solicitors and barristers, who have co-operated in the work during the year.

The establishment of the Poor Persons Committee does not affect the work of the Poor Man's Lawyer's Association, which continues to give free legal advice as heretofore to persons too poor to pay for it. The Committee and the Association work in concert, the Association transmitting to the Committee cases which come to its notice of the kind that are dealt with by the Committee.

Legal Education.

A copy of the report of the Birmingham Board of Legal Studies for the year ended 31st August last shows that the total number of students is ninety-three (compared with 107 in the previous year), of whom forty-three are reading for The Law Society's Examinations.

The memorandum issued by The Law Society on the training of articled clerks was considered by the Committee, who put forward the suggestion, *inter alia*, that the normal period of training should be five years, of which the first year should be spent in a whole-time course at an approved law school before entering into articles, and the remaining four years under articles.

The memorandum is still under consideration by The Law Society.

Incorporated Accountants' Manchester and District Society.

Shareholders and Profit and Loss Accounts.

In responding to the toast of the Society of Incorporated Accountants and Auditors at the dinner of the Incorporated Accountants' Manchester and District Society at the Midland Hotel on the 22nd February, Mr. Henry Morgan, the President, addressed himself to the question of the information which should be given in the profit and loss accounts of companies, and the duties of auditors in regard thereto. This question, Mr. Morgan contended, was not only of exceptional interest to members of his profession, directors and others engaged in public company practice, but to the investing public. He said it was unfortunate that the Companies Act, 1929, while providing for the preparation of a profit and loss account, gave no indication as to its form and contents. Mr. Morgan associated himself with the view recently expressed by Lord Plender that the real value of fixed assets lies, with certain exceptions, in their earning capacity. "If, therefore," said Mr. Morgan, "a profit and loss account does not show clearly and correctly the true profits of a company, the balance sheet loses much of its value, as showing the real position of a company." It was fundamentally a necessity that a profit and loss account, like a balance sheet, should be *true and correct*. He specified that it was unsound, and could not be reconciled with the certification of a balance sheet, that there should be under-statement of profits through the creation of an undisclosed free reserve. All debits or credits of an abnormal, extraneous or non-recurring character should be separately stated, with the amounts, otherwise a shareholder might be misled as to the actual profit-earning capacity.

The Times, in a recent issue, was severely critical of the practice of auditors in relation to profit and loss accounts. Mr. Morgan was definitely of opinion the general practice of auditors did not comply with s. 134 (1) of the Companies Act. This section provided that the auditors should make a report to the members "on *the accounts examined by them* and on every balance sheet . . ." The ordinary form of auditors' certificate in practice did not make a report "on the accounts examined by them" (the auditors). The auditors' certificate that they had obtained all the information and explanations they had required, and that the balance sheet was properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, did not, in his view, completely satisfy the Act; otherwise the words "on the accounts examined by them" became redundant. If Mr. Morgan's interpretation of s. 134 (1) was legally correct, the auditor became responsible for the profit and loss account as issued to shareholders, and he would have to report upon it as one of the accounts examined by him.

Mr. Morgan was glad to say that, having examined a considerable number of accounts issued by public companies since the beginning of the year, he found considerable improvement in the form of the profit and loss accounts. These had been drawn up in a way that conveyed to shareholders as much information as they could reasonably expect. The sources from which the profits had been derived were clearly indicated, where reserves from previous periods were brought into account, the amounts were stated and the profits and losses of subsidiary companies, if not incorporated in the accounts, were fully disclosed.

The fact that these remarks applied to prosperous companies was an effective answer to those who insistently argued that disclosure of reasonable information in the profit and loss account might seriously damage the company's interests. There were cases, however, where the same favourable view could not be taken, the most common fault being the omission to bring into account or to disclose the full profits resulting from operations through subsidiaries.

Pending amending legislation, Mr. Morgan urged the law was not alone the measure of the responsibility and obligations of incorporated accountants, who would continue to be guided by a code of ethics for which legislation did not, and often could not, provide.

The Auctioneers' and Estate Agents' Institute.

A sessional evening meeting of the members of this Institute will be held at 29, Lincoln's Inn-fields, W.C.2, on Thursday, 3rd March, 1932, at 8 p.m., when Mr. Alfred J. Burrows (Past-President and Member of Council) will deliver a Paper entitled "Some Impressions of Real Estate in Canada."

United Law Society.

A meeting of the Society was held last Monday evening, 22nd February, in the Middle Temple Common Room, Mr. George Bull was in the chair.

Mr. T. R. Owens moved: "That in the opinion of this House the case of *Wood* v. *Letrik Ltd.* (*The Times*, 12th and 13th January, 1932), was wrongly decided."

Mr. J. F. Marnan opposed and there also spoke Messrs. H. F. Wood-Smith, G. E. Habershon, G. S. Macquoid and R. Fox. The opener having replied the motion was put to the House and was lost by four votes.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 23rd February, 1932 (chairman Mr. H. J. Baxter), the subject for debate was: "That the case of *Slingsby & District Bank Ltd.*, 48 T.L.R. 114, was wrongly decided." Mr. P. W. Iliff opened in the affirmative; Mr. A. K. Thompson opened in the negative; Miss A. W. Rhodes seconded in the affirmative; Mr. T. Kenyon seconded in the negative. The following members also spoke: Messrs. C. F. S. Spurrell, E. L. Hayes, B. W. Main, Miss H. M. Cross, W. L. Archer, P. H. North-Lewis and T. M. Jessup.

The opener having replied, and the chairman having summed up, the motion was lost by four votes. There were twenty-three members and four visitors present.

The Law Clerks' Debating Society.

The above Society held a very successful meeting on Thursday, the 18th February, when there was an inter-debate with The Lensbury Club (the members of which are drawn from The Shell-Mex and Associated Companies). The motion: "That the day of the One-Man Business is over," was proposed by Messrs. Stain and Benjamin, and opposed by Mr. H. G. Banting of The Law Clerks' Society. Amongst the gathering of 145 members and visitors were notably, Mr. G. K. Chesterton, Mr. Heathcote Williams and Mr. Basil Fenwick. The motion on being put to the House was rejected by an overwhelming majority.

VALUATIONS FOR PROBATE,

ESTATE DUTY, DIVISION, etc.

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The Social and Political Education League.

Professor F. J. C. Hearnshaw, M.A., LL.B., who is this year's President of the Social and Political Education League, will deliver his presidential address on "The Relation of History to Politics," at University College, Gower Street, W.C.1, on Monday, 7th March, 1932, at 8.30 p.m. The Right Hon. Sir Leslie Scott, K.C., will take the chair. Tickets may be obtained free on application to Mr. J. W. Baggally, Hon. Secretary, 4 Stone Buildings, Lincoln's Inn, W.C.2.

Parliamentary News.

Progress of Bills.

House of Lords.

Bournemouth, Poole and Christchurch Electricity Bill.
Read Second Time. [18th February.
Chancel Repairs Bill.
Read Second Time. [18th February.
Dangerous Drugs Bill.
In Committee. [23rd February.
Destructive Imported Animals Bill.
Read Second Time. [23rd February.
Grey Seals Protection Bill.
Reported without Amendment. [24th February.
Kingston-upon-Thames Extension Bill.
Read Second Time. [24th February.
Ministry of Health Provisional Order (Maidstone Extension) Bill.
Reported without Amendment. [24th February.
Ministry of Health Provisional Order (Sittingbourne and Milton) Bill.
Reported without Amendment. [24th February.
Northern Ireland (Miscellaneous Provisions) Bill.
Read Third Time. [24th February.
Sea Fisheries Provisional Order Bill.
Read Second Time. [23rd February.
Sidmouth Water Bill.
Read Second Time. [23rd February.
South Metropolitan Gas Bill.
Read Second Time. [18th February.
Veterinary Surgeons (Irish Free State Agreement) Bill.
Read Third Time. [18th February.
Worksop Corporation Bill.
Read Third Time. [24th February.

House of Commons.

Gateshead Extension Bill.
Read Second Time. [19th February.
Import Duties Bill.
Reported with Amendments. [24th February.
Juries (Exemption of Firemen) Bill.
Read Second Time. [23rd February.
Southern Railway Bill.
Read Second Time. [23rd February.
Worksop Corporation Bill.
Read First Time. [24th February.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that the honour of Knighthood be conferred upon Mr. HERBERT DU PARCQ, K.C., in virtue of his appointment to be a Justice of the High Court of Justice, King's Bench Division.

The Board of Trade have appointed Mr. HENRY THOMAS JONES to be Official Receiver for the Bankruptcy District of the County Courts holden at Salisbury, Dorchester and Yeovil, as from the 1st March, 1932, in the place of Mr. H. T. Rowe, deceased. Mr. Jones is a member of the firm of Messrs. Hamilton, Fulton, Sant and Jones, of Salisbury.

The India Office announces that the King has been pleased to approve the appointment of Lieut.-Col. JOHN GIBB THOM, M.P., an Advocate of the Scottish Bar, to be a Puisne Judge of the High Court of Judicature of Allahabad.

Mr. HOWARD C. F. M. FILLMORE, solicitor, Deputy Town Clerk of Bury, has been appointed Town Clerk of Warwick, in succession to Mr. R. H. WRIGHT, solicitor, who has been appointed Clerk and Solicitor to Surbiton Urban District Council.

Mr. S. ASHTON STRAY, solicitor, of Twickenham, has been appointed Assistant Solicitor to the Borough of Twickenham.

Mr. HERBERT ATHELSTAN JEFFERY, solicitor, a member of the firm of Messrs. H. J. Jeffery and Son, solicitors, of Bradford, has been elected President of the Bradford (Yorks) Incorporated Law Society.

Professional Announcements.

(2s. per line.)

Mr. JOHN B. BEAUMONT, of 21 Bond-street, Leeds, and Mr. W. NORMAN ROBERTS, of 39, Park-square, Leeds, have entered into partnership, and will now practise together at Gordon Chambers, 21, Bond-street, Leeds, in the name of "Messrs. Beaumont, Son & Roberts." Their telephone number is: Leeds 24212.

Mr. ARTHUR L. FORRESTER, of Messrs. Forrester, Moir and Co., Malmesbury, has taken into partnership his son, Mr. REGINALD ARTHUR COLLINGWOOD FORRESTER, B.A. Oxon, as from the 1st February, 1932. The firm will henceforth be carried on under the style of "Messrs. Forrester and Forrester."

SOLICITORS AND THE COUNTY COURT.

At the Westminster County Court last Tuesday, Judge Turner announced that he was unable to accept the personal undertaking of a firm of solicitors to pay, because, he said, solicitors were not officers of the court. He added: "I always regard it as a scandal that I cannot accept their undertaking, but that is where we are. Apparently the high contracting authorities of The Law Society regard the county court as beneath their consideration."

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

			GROUP I.	
DATE	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
			Non-Witness.	Witness. Part II.
M'nd'y Feb. 29	Mr. Andrews	Mr. Blaker	Mr. Ritchie	Mr. *More
Tuesday Mar. 1	Jones	More	Andrews	*Ritchie
Wednesday 2	Ritchie	Hicks Beach	More	*Andrews
Thursday .. 3	Blaker	Andrews	Ritchie	More
Friday 4	More	Jones	Andrews	Ritchie
Saturday ... 5	Hicks Beach	Ritchie	More	Andrews

	GROUP I.		GROUP II.	
	MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
	Witness. Part I.	Witness. Part II.	Witness. Part I.	Non-Witness.
M'nd'y Feb. 29	Mr.*Andrews	Mr.*Jones	Mr. Blaker	Mr. Hicks Beach
Tuesday Mar. 1	More	*Hicks Beach	*Jones	Blaker
Wednesday 2	*Ritchie	*Blaker	Hicks Beach	Jones
Thursday .. 3	Andrews	Jones	*Blaker	Hicks Beach
Friday 4	*More	*Hicks Beach	Jones	Blaker
Saturday ... 5	Ritchie	Blaker	Hicks Beach	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (18th February, 1932) 5%. Next London Stock Exchange Settlement Thursday, 3rd March, 1932.

	Middle Price 24 Feb. 1932.	Flat Interest Yield.			Approximate Yield with redemption		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	88	4	10	11			
Consols 2½%	57½	4	7	0	—		
War Loan 5% 1929-47	100	5	0	0	—		
War Loan 4½% 1925-45	99	4	10	11	4	12	0
Funding 4% Loan 1960-90	91	4	7	11	4	8	7
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	94xd	4	5	1	4	7	2
Conversion 5% Loan 1944-64	103½	4	16	9	4	15	8
Conversion 4½% Loan 1940-44	99	4	10	11	4	12	3
Conversion 3½% Loan 1961	79	4	8	8	—		
Local Loans 3% Stock 1912 or after	65	4	12	4	—		
Bank Stock	254	4	14	6	—		
India 4½% 1950-55	81	5	11	1	—		
India 3½%	60	5	16	8	—		
India 3%	52	5	15	4	—		
Sudan 4½% 1939-73	92½	4	17	3	4	18	9
Sudan 4% 1974	83½	4	15	10	4	19	2
Transvaal Government 3% 1923-53 (Guaranteed by British Government.)	84	3	11	5	4	3	4
Colonial Securities.							
Canada 3% 1938	88	3	8	2	5	5	0
Cape of Good Hope 4% 1916-36	95	4	4	2	5	5	9
Cape of Good Hope 3½% 1929-49	78½	4	9	3	5	8	2
Ceylon 5% 1960-70	96½	5	3	8	5	4	2
Commonwealth of Australia 5% 1945-75	80½	6	4	3	6	6	6
Gold Coast 4½% 1956	91½	4	18	4	5	2	6
Jamaica 4½% 1941-71	91½	4	18	4	4	19	11
Natal 4% 1937	94	4	5	1	5	8	0
New South Wales 4½% 1935-45	67½	6	13	3	8	11	7
New South Wales 5% 1945-65	70½	7	1	10	7	8	3
New Zealand 4½% 1945	80½	5	11	9	6	16	5
New Zealand 5% 1946	92½	5	8	1	5	16	0
Nigeria 5% 1950-60	96½	5	3	7	5	4	9
Queensland 5% 1940-60	77½	6	9	1	6	16	5
South Africa 5% 1945-75	95	5	5	3	5	5	10
South Australia 5% 1945-75	77½	6	9	1	6	11	6
Tasmania 5% 1945-75	77½	6	9	1	6	11	6
Victoria 5% 1945-75	77½	6	9	1	6	11	6
West Australia 5% 1945-75	78½	6	7	5	6	9	9
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.							
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	15	3	—		
Birmingham 5% 1946-56	102	4	18	0	4	17	2
Cardiff 5% 1945-65	98½xd	5	1	6	5	1	11
Croydon 3% 1940-60	69½	4	6	4	5	2	0
Hastings 5% 1947-67	101	4	19	0	4	18	9
Hull 3½% 1925-55	75	4	13	4	5	7	10
Liverpool 3½% Redeemable by agreement with holders or by purchase	73	4	15	10	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	55	4	14	2	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	64	4	13	9	—		
Metropolitan Water Board 3% "A" 1963-2003	65	4	12	4	—		
Do. do. 3% "B" 1934-2003	66	4	10	10	—		
Middlesex C.C. 3½% 1927-47	84	4	3	4	4	19	9
Newcastle 3½% Irredeemable	72	4	17	2	—		
Nottingham 3% Irredeemable	63	4	15	3	—		
Stockton 5% 1946-66	99	5	1	0	5	1	3
Wolverhampton 5% 1946-56	100	5	0	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	76½	5	4	7	—		
Gt. Western Railway 5% Rent Charge	89	5	12	4	—		
Gt. Western Rly. 5% Preference	71½	6	19	10	—		
L. Mid. & Scot. Rly. 4% Debenture	69½	5	15	1	—		
L. Mid. & Scot. Rly. 4% Guaranteed	62½	6	8	0	—		
L. Mid. & Scot. Rly. 4% Preference	45½	8	15	9	—		
Southern Railway 4% Debenture	69½	5	15	1	—		
Southern Railway 5% Guaranteed	85	5	17	8	—		
Southern Railway 5% Preference	63	7	18	9	—		
*L. & N.E. Rly. 4% Debenture	66½	6	0	3	—		
*L. & N.E. Rly. 4% 1st Guaranteed	56½	7	1	7	—		
*L. & N.E. Rly. 4% 1st Preference	38½	10	7	9	—		

*The Prior Charge stocks of the L. & N.E. Ry. are no longer available for Trustees under the heading of either Strict Trustee or Chancery Stocks as no dividend has been paid on that Company's Ordinary Stocks for the past year.

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